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HEARING

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

ONE HUNDREDTH CONGRESS

SECOND SESSION

THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS: PROSPECTS ON U.S. RATIFICATION

MARCH 29, 1988

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PUBLIC HEARING ON THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS: PROSPECTS ON U.S. RATIFICATION

TUESDAY, MARCH 29, 1988

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,
Washington, DC.

The Commission met, pursuant to notice, in room 485, Russell Senate Office Building, Washington, DC, at 10:05 a.m., Representative Steny H. Hoyer (Chairman) presiding.

In attendance from the Commission: Representative Don Ritter and Assistant Secretary of State, Richard Schifter.

Also attending, Senator Mark O. Hatfield.

Also in attendance: Samuel G. Wise, staff director; Mary Sue Hafner, deputy director and general counsel; Jane S. Fisher, senior staff consultant; and Erika Schlager, hearing coordinator.

Chairman HOYER. I want to call this hearing to order.

Senator, I understood the Senate was going into Executive Session. Is that the case now? Are they in session now?

Senator HATFIELD. I don't know how long it is going to take, but it is going on now.

Chairman HOYER. It may take some time. I am going to defer my opening statement, Senator, so we can accommodate your schedule. We very much appreciate you being with us, as one of our most knowledgeable people on this particular issue. It is an issue which I feel very strongly about and it is an issue which the Soviets and others in the East raise pointedly on a regular basis in international forums.

I will respond, as I know others do, and as I know the State Department does, that individuals around the world are really much more concerned about performance than they are about commitments and promises which go unfulfilled. But we are very much interested in your views on this issue. Your full statement of course will be included in the record at this point in time, and Senator, you are free to proceed in whichever manner you feel to be appropriate.

I might say at the opening for the individuals who may not know, Senator Hatfield is one of the senior Members of the U.S. Senate, the ranking Republican on the Appropriations Committee, the gentleman who has served, in my opinion, with great distinction and such leadership on behalf of the country for 6 years as Chairman of the Appropriations Committee. I am proud to serve on

the Appropriations Committee, on the House side, and serve with him. He is one of the great U.S. Senators, in my opinion.

Senator.

STATEMENT OF SENATOR MARK O. HATFIELD

Senator HATFIELD. Mr. Chairman, I thank you very much for your generous introduction. Let me also say that it is a privilege to appear before you here today, and to commend you and your co-chair, Senator DeConcini, for giving extraordinary leadership on matters involving human rights and the people problems of our country and the world. Your work on the Appropriations Committee, and in other activities of the House of Representatives, is appreciated.

I think this Commission is providing a tremendous focus for the Congress and the administration on a matter that should be acted upon. I am here today to make some brief remarks, more in the role as Chairman of the Arms Control and Foreign Policy Caucus, which is made up of Members of the House of Representatives, and of the Senate, Democrats and Republicans alike, as well as a staff who really perform extraordinary feats on the very limited resources that we have in this independent organization within the framework of the Congress.

This Caucus was founded about 30 years ago as Members of Congress for Peace Through Law, and now has about 130 members.

Mr. Chairman, it is appropriate then that I testify this morning as a strong supporter of the ratification of the U.N. Covenant on Civil and Political Rights and the U.N. Covenant on Economic, Social and Cultural Rights. These covenants form an international bill of rights, a clear set of standards to which every person and every government in this world can and should refer.

These are nothing new. They were adopted by the U.N. General Assembly in 1966, and entered into force in 1976, after 35 nations had ratified them. President Jimmy Carter signed them in 1977, and submitted them to the Senate in 1978, for its advice and consent.

When hearings finally were held in the closing months of 1979, more than 50 people testified in favor of them—including the U.S. Ambassador to the United Nations, the director of the American Civil Liberties Union and the chairman of Amnesty International. The Senate Foreign Relations Committee seemed ready to report the covenants favorably to the full Senate when the Soviet Union invaded Afghanistan. The covenants have not been discussed or debated since.

I find it ironic that the Soviet invasion of Afghanistan, one of the greatest human rights violations in recent history, sidetracked the debate in this country and in this Congress over ratification of these covenants. At the same time we criticize the Soviet action, as well we should, we stand defenseless to the charge that we have yet to ratify the most inclusive international human rights statement since the Universal Declaration of Human Rights was signed in 1948. Mr. Chairman, I believe that the stated commitment of the United States to human rights should stand second to none. Our ratification of these covenants is long overdue.

Let me review for just a moment the substance of these covenants. Perhaps a line from the preamble of both covenants is the best place to start.

> In recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Starting from that premise, the covenants spell out the basic rights I believe should be guaranteed for every man, woman and child on earth.

The Covenant on Civil and Political Rights prohibits torture, arbitrary and inhuman punishment, slavery, and arbitrary arrest and detention, it provides for the freedom of movement, and for the integrity of the judicial system. It expressly forbids arbitrary interference with family, home or correspondence, and guarantees the freedom of thought, conscience and religion, the right to peaceful assembly, and the right to take part in public affairs. In short, the Covenant on Civil and Political Rights represents the traditional Western view of human rights as incorporated in our Declaration of Independence and the U.S. Constitution as well as the political documents of Europe before them.

As important as these rights are, Mr. Chairman, they do not mean much if people cannot find enough to eat, a roof under which to sleep, a job, or an education. Human rights must mean more than the absence of torture or the freedom from censorship, and the Covenant on Economic, Social and Cultural Rights was drafted in recognition of that fact. It guarantees the right to food, shelter, work and education. It guarantees the right to join or form a labor union, the right to social security, the protection of the family and the right to take part in cultural activities. In short, the Covenant on Economic, Social and Cultural Rights makes clear that human rights are linked inextricably with human needs.

> The numbers stand in long rows,

writes Ruth Leger Sivard in the most recent edition of World Military and Social Expenditures.

> like tombstones, monuments to lives lost to neglect: 100 million people have no shelter whatsoever; 770 million do not get enough food for an active working life; 500 million suffer from iron-deficiency anemia; 1.3 billion do not have safe water to drink; 800 million live in absolute poverty; 880 million adults cannot read or write; 10 million babies are born malnourished every year, and 14 million children die of hunger.

These statistics, as appalling as they are, become even more so when you think about the individual men, women and children they represent. They also become very revealing.

We live in a world at war. Twenty-two wars were underway at the beginning of this year, more wars than at any previous time in recorded history. In 1987, well over 2 million people died in these wars. Eighty-four percent of them were civilians. This is a world at war, Mr. Chairman, because this is a world full of hunger and homelessness, full of repression and exploitation. As a nation, we must recognize that fact and those needs, not only because we are morally obligated to do so, but also because the success of our foreign policy depends on it.

When I was invited to testify at this hearing, Mr. Chairman, I began to think about my own views on human rights, and the relationship of those rights to the success of our foreign policies. And at this point I would like to just raise a couple of those personal views.

Two of the most often cited U.S. foreign policy disasters in recent years are Iran and Nicaragua. Both are countries which had a strong relationship to the United States, even a decade ago. Indeed, both were our most trusted ally in their respective region. Today they are our fiercest enemy in the same regions. Iran even goes so far as to celebrate "Death to America Day."

The reason why these two countries turned on us, beneath the layers of debate over capitalism and communism, over fundamentalism and progressivism, has more to do with human rights than with anything else. The truth of the matter is that our close allies, the Shah of Iran and Anastasio Somoza, brutally suppressed their opponents and used their power to become very wealthy while the vast majority of their people toiled just for enough to eat.

There are those today who suggest that both leaders fell because the U.S. abandoned them. I reject that notion. What the United States did was recognize the increasing unpopularity of these leaders, an unpopularity bred in large part of years and years of institutionalized human rights violations. That recognition, combined with a President of the United States who had a genuine personal commitment to human rights, led us to rethink our previously unquestioned support for the leaders and their type of rule. The problem was that it was too little, too late. The popular resentment of the leaders and of the United States for supporting those leaders and their brutal regimes for so long had gone too far. In Iran and in Nicaragua, revolution was inevitable.

The lesson to be learned from Iran and Nicaragua is not that we should keep our mouths shut when our allies, even our closest allies, violate basic human rights. Indeed, the lesson is just the opposite; we must state our commitment to human rights strongly and honestly, to friend and foe alike. And to our friends and allies, we must do it before revolution is inevitable. I am convinced, Mr. Chairman, that the success of our foreign policy depends upon it.

These covenants were first adopted by the U.N. General Assembly the year I was elected to the Senate. A lot of lives have been lost in this troubled world since then, a lot of lives of a lot of people whose genius and compassion were taken for no legitimate reason at all. A lot more people have been denied these rights that we consider inalienable, the right to eat, the right to read, the right to speak, the right to worship and the right to their own bodies. No legitimate reason exists for their denials either.

I do not mean to suggest that our ratification of two covenants, regardless of how important they are, will change the world overnight, it will not. But what I do mean to suggest is that our ratification of these two covenants would send a strong signal, a signal that in the midst of hunger and homelessness, repression and exploitation, we, the United States, will champion the fundamental importance of human rights.

Mr. Chairman, the ratification of these covenants will only be possible if we, in the Congress, have the political will to do it. Un-

fortunately, we all too often muster the political will for weapons of war, but fail to find it for the weapons of peace. That is exactly what these covenants are: weapons of peace.

I was pleased to learn that Senator Clairborne Pell, the Chairman of the Senate Foreign Relations Committee and Congressman Dante Fascell, the Chairman of the House Foreign Affairs Committee, have agreed to testify in support of these covenants. Their support for them and the convening of this hearing suggest to me that the necessary political will just might be here at this time. I hope it is, and look forward to working toward ratification with the members of this Commission and my distinguished colleagues in the months ahead.

And, Mr. Chairman, once again I want to commend you for building the fire, for sparking and igniting the action that is required.

Chairman HOYER. Thank you very much, Senator, for your very compelling and thoughtful statement.

Let me say at this point in time Senator Pell, unfortunately has just let us know that he cannot be here. He, however, has submitted a statement, and without objection I am going to have his statement included in the record, after the conclusion of your testimony. Senator, if you will, just one question I want to ask. Can you characterize for me the major reasons for the failure of the Senate to ratify the treaty?

Senator HATFIELD. I suppose if I were to make it very brief and perhaps over-simplified, I would say the basic will to address this particular issue was lacking. If you recall, we had both political transition and strong opposition to the Soviet action in Afghanistan. And like so many other things, we tend to give our attention to the immediate.

A ratification process is something that occurs over a period of time. Afghanistan was now, it was then, it ignited a strong sense of outrage, it provided Senators with opportunities to make speeches—we are constantly looking for such opportunities. And oftentimes the Senate is willing to speak, but not willing to act.

I am only hopeful that the very moment that this hearing is going on, there is a briefing going on about the INF Treaty. I very much hope that the record of the INF Treaty will not be as it has been with these. But bear in mind, there are also right wing organizations that particularly have infected my party, who believe that any kind of international agreement signed under the aegis of the United Nations is a giving up of sovereignty. It is a step toward world government. They believe these matters are all, of course, tools of the Devil and should be resisted at all cost.

You have a combination of many factors, and I think also that people have lost confidence to a great extent, unfortunately, in the United Nations, and anything that has the stamp of the United Nations on it, because they focus on the U.N. General Assembly and its immobility on occasions of importance and not on the many agencies of the United Nations that do function every day—we aren't even aware of them addressing many human problems—the World Labor Organization, the UNESCO, and others.

I think the failure to ratify these covenants was the combination of many things, and I think at the time in the Senate there was

not strong leadership to address this issue. And as much as we all have co-equal status in the Senate, you do realize of course that there is a powerful role that leadership still has to call up matters, to set the agenda and the priorities. Obviously, leadership did not apply a priority to this particular issue.

Now that did not cause me to be divested of obligation. Some of us pressed for this consideration, but we were few in number, and we obviously did not influence the decision that we felt should be made. I could go on, but I think that gives you a flavor of the Senate as it functioned then, and unfortunately, as it has functioned in other times, in important times of history, on important issues.

Go back to the League of Nations Debate. It was again one of those examples of a lost opportunity, a golden moment in history that was frittered away, slipped through our fingers.

I think you have created another moment in history, this Commission, by bringing this focus now. It is up to us now to seize this moment of opportunity, to change history.

Chairman HOYER. Thank you, Senator.

Mr. Ritter.

Representative RITTER. Senator, I would like to ask you a question, if at all possible.

Senator HATFIELD. Sure.

Representative RITTER. I listened with interest to your testimony, and I would submit to you, don't you think that the United States has, for example, in the last 15 years, really gone much further in the area of human rights, than we had been before, and really taken up human rights as a major international arena of discussion and political action?

Senator HATFIELD. That we have addressed the issue and that we have made progress? Yes, and no. We have certainly devoted more rhetoric to the issue of human rights. We have raised it in arenas where we had not raised it before.

I still come back to the basic fundamental, and that is there has to be a foundation upon which human beings can exercise rights. And that foundation—it goes back to the physical needs of the body and the mind to function, and to function fully. When we address that issue, and then we look at the allocation that we make of our national resources, of finance, of technology, of human and natural resources, in general, the imbalance is so obvious. The percentage of our appropriations that Chairman Hoyer and I have to allocate on a discretionary basis, the imbalance of that between the development of technology and policies to improve our capability to destroy life and to threaten the whole globe and the planet, and all life on this globe, is so far out of balance with those resources that we allocate and devote to the improvement of the quality of life, not only domestically for our own people—and we don't have to leave our country to find hungry people, and people who have not the opportunities for strong bodies and minds, to function as productive citizens of our Nation. We can do that within this country. Beyond our shores we still are the largest arms peddler in the world.

When we, in effect, put $4 billion into Pakistan in 1 year of arms, when Pakistan does not even have a dependable subsistance-

agricultural base to feed its own people, I think again is an example of the distinction between rhetoric and action. And I do not think our record of action was up to the standard of our capability, or of what is expected of us.

Representative RITTER. Senator, you know I could say that the rationale behind helping Pakistan with arms is the fact that the Soviet Union has invaded a neighboring country, but I don't think we want to get into that. And the Pakistanis have been extremely cooperative in helping to stem a monumental Soviet aggression which this Commission probably more than any other body in the Congress, has taken on as an issue.

Senator HATFIELD. Congressman, I would not argue that point in great detail, except to say again, delineate between the shipment of arms, even to those people that are transmitting those arms into Afghanistan for us, and the amount that we send for human need, of even the food for those refugees. I have fought for the refugee program year after year, fought against the reductions of appropriations, the reductions of numbers for relocation. And again we can find the money and the resources for the arms, right or wrong—I won't argue the merits of that—but certainly not for the human needs.

Representative RITTER. It is important though to understand that there is a right and wrong involved in a massive aggression against the nation of Afghanistan, and the fact that 4.5 million refugees have been created by a Soviet invasion, not an American invasion.

But I have another question, and this concerns me because I find that it has a bipartisan nature to it. The idea that somehow the regime in Nicaragua, or the regime in Iran is somehow a result of America's inability to make the kind of world that we, you and I, would like, I think is an over-simplification. And, I would submit that—and I think you would agree with me here—that the revolution in Nicaragua was assisted by the Carter regime—the Carter Presidency, by calling attention to human rights. And Jimmy Carter and the administration did get Somoza out, and it was a popular revolution.

I think we all must understand that the revolution against Somoza was a broad, popular revolution which was subverted by those who had guns.

And, I think the same can be said to be true in Iran. That revolution was a social-political, to some extent democratic, and to some extent fundamentalist, but the fundamentalists had the guns and eventually took the revolution. So, to some extent the United States was responsible for allowing the forces of change to be victorious in Nicaragua, and in Iran. But we didn't have the ability to moderate that change to the extent that we might have liked to. And forces of totalitariansim basically took charge in both arenas.

But, I submit that America has been the ultimate positive force in comparison with all other nations to promote human rights and human welfare the world over. And, I think we get a bad rap by self-flagellating to the point where we don't understand that this world is a comparative one, and not one of black and white, or total good or evil.

Do you want to comment on that?

Senator HATFIELD. I would heartedly disagree with you. And I would disagree with you for many reasons, but let me give you two. One is, I think, the time that we began to compare ourselves against the action of other people is not the measurement. I grew up, like you perhaps, with a lot of homilies, a lot of admonitions by family that had very little meaning to me at the time, but in retrospect now have some very deep meaning.

Never measure yourself against the mean, or the average in a class, measure yourself only against the capability and talent, and skills with which you have been gifted. And I think when you begin to measure yourself against other people, then we are really moving toward mediocrity. I think the same is true in the world, we can always justify any absence of action, we can always justify any positive affirmative action by looking around and finding someone to compare ourselves against. We ought to compare ourselves against our own stature, our commitments and our ideals, our principles, our values. And we were not performing.

As I said in my testimony, I think what our foreign policy has led to the inevitability of revolutions. And in those two particular revolutions what was one of the major rallying points? Anti-Americanism.

Representative RITTER. But those revolutions, Senator, were revolutions of the people of those countries, and to some extent, started off in a positive direction throwing off oppression. It was only when certain groups usurped those revolutions—and to some extent we allowed, we promoted, we helped those revolutions to take place.

Chairman HOYER. Congressman and Senator, as interesting as this discussion is on Nicaragua and Iran, and it does have some tangential relationship to the subject of the hearing, but so tangential I am going to urge both of you to conclude for we have the Assistant Secretary of State and two other witnesses.

Senator HATFIELD. I apologize, Mr. Chairman.

Representative RITTER. Mr. Chairman, could I close with the remark that according to the distinguished, and I mean distinguished Senator's criteria, if in a classroom the physics professor grades rock-hard, there is sometimes a "bell curve," that is placed out into the class to rate those students, even though their grades were very low, the "bell curve" may put them at the top of the class and they get an "A."

Senator HATFIELD. I did not grade on a curve. [Laughter.]

I graded on the individual's ability as perceived by this recitation, by his performance and examinations, and for those 9 years that I was a professor, that's how I graded students. And I felt that was the fairest way.

I would like to just not pursue it, Mr. Chairman, you are quite right, and I apologize for getting involved. But I would like to add just one addendum, simply that when the regimes are so dependent upon the United States for resources, or others, such as the Somoza regime, and the Shah's regime were, then we have an opportunity, as well as a responsibility, to try to influence in subtleties as one would influence one's child, or one's brother, or one's sister, or one's friend, as a friend, in loving concern, not in a judgmental way that tries to re-create the world in our image, but certainly attesting to a basic standard of principles.

This is where I think Mr. Carter failed in his effort, as noble as his efforts were. It was perceived that he was asking the countries of the world to address human rights in our image, which set us up as the measurement, rather than these covenants. If we had only had these covenants in place. Let us commit ourselves to that standard. But it was perceived, right or wrong, that Mr. Carter's human rights efforts were a call to adopt us as the measurement, to show the United States as the image other countries should try to imitate. I think that was his error.

But I do think if we had these covenants in place, they could be then the mold, the guide. It wouldn't be then resented as sort of one country saying: "Because we are powerful, we are strong." We haven't even cleaned up our own backyard on a lot of these points, but let us look at that covenant, that statement. We need that star, that guidance, not personified in an administration, or in one country.

Chairman HOYER. Senator, I appreciate very much your statement, as I said before, and thank you for spending the time with us.

Senator HATFIELD. Happy to do it. I appreciate the opportunity.

Chairman HOYER. Thank you.

At this time I would like to ask Assistant Secretary of State Schifter to come forward. Secretary Schifter, of course, is a member of the Commission, our Assistant Secretary for Human Rights and Humanitarian Affairs, one of our most outstanding advocates in the United States on behalf of the issue of human rights and individual rights around the world.

We are very pleased that he is a member of the Commission.

Secretary Schifter.

STATEMENT OF ASSISTANT SECRETARY OF STATE RICHARD SCHIFTER

Secretary SCHIFTER. Thank you, Mr. Chairman.

Mr. Chairman, technically speaking, as we all know, this is not a hearing on the international human rights covenants. It is an inquiry by this Commission to determine why during the 22 years that have elapsed since the U.N. General Assembly approved the covenants, the United States has not ratified them.

If this had been a hearing on the covenants and I had been called upon to present clear testimony for the administration, I would have informed the Commission that as far as the administration is concerned, the covenants are under study. But that would not shed a great deal of light on the question to which the Commission seeks an answer, why are these documents still, after more than 20 years, under study, and what are the practical consequences of this delay?

I shall try to deal with the question as to history and background in my capacity as a member of this Commission, speaking personally.

After close to 20 years of work, the covenants were approved by the U.N. General Assembly in December 1966. Note should be taken of the fact that the Johnson administration, which was then in office, and which had actively participated in the final stages of

the work to complete the covenants, had 2 years and 1 month to sign them and send them to the Senate, but failed to do so. Nor was any action taken on them during the Nixon and Ford administrations.

Then, in February 1978, more than 11 years following their approval, the Carter administration signed the covenants and submitted them to the Senate. One year and nine months later, in November 1979, the Senate Foreign Relations Committee held a hearing on them, in which a good deal of favorable and some unfavorable testimony was received.

The Carter administration remained in office for another year and two months, but the Senate Foreign Relations Committee took no action. It has not taken any action since that time.

The Reagan administration, as indicated earlier, has taken the position that the covenants are now under study.

If we ask the general question as to why movement on the covenants has been so extraordinarily slow, the answer lies in the fact that since the early 1950's, there has been a significant amount of sentiment in this country against dealing with human rights issues through multi-lateral treaty arrangements. It may be recalled that in the fifties a constitutional amendment which would have closed the door to such arrangements, the Bricker amendment, and its follow-on George amendment, barely missed two-thirds approval by the Senate.

We are also well aware of the fact that as simple and clearcut a document as the Genocide Convention, signed in 1948, did not win Senate approval until 1986, and then only after it received the strong support of President Reagan and Secretary Shultz. Even to this day the implementing legislation to the Genocide Convention which is needed to complete the process, is moving through the Congress at a snail's pace.

Thus, the answer to the question as to why there has been no action on the covenants in all these years is that opposition in the Senate to international human rights treaties is strong enough to have discouraged the leadership from even trying to get them reported out of committee, let alone schedule them for floor action.

What have been the consequences of the United States' failure to ratify?

One of them, as we all know, has been that the most egregious human rights violators have consistently criticized us for our failure to have adhered to the international human rights covenants. And that is the experience, Mr. Chairman, to which you referred to earlier. When confronted with this criticism, I, for one, have responded by saying that in an ideal world it may very well be best for every country to ratify and abide by the covenants.

However, if one had to choose only one of these, it would be better to abide and not ratify, than to ratify and not abide. That usually ends the conversation.

There is no doubt that in the early years following approval of the covenants, supporters of the international human rights cause were understandably concerned about our failure to ratify them. As the years have passed though, I believe that experience has taught us that the consequences of our failure to ratify have not been as dire as once believed. Let me explain.

One of the important arguments for the covenants was that they are what are called binding instruments. That fact distinguishes them from the Universal Declaration of Human Rights, which as a mere U.N. General Assembly resolution, is, under the terms of the United Nations' Charter nonbinding.

All of us know, of course, the legal difference between a binding and a nonbinding document. But what we need to look at is what the practical difference may be in the international arena. The only truly effective enforcement mechanism provided for the covenants is the critique of the court of world public opinion, to the extent to which that sanction can be invoked. It can be invoked as much for actions in conflict with the Universal Declaration of Human Rights, which can be viewed as morally binding, as it can be for actions in conflict with the covenants.

In fact, as the escape clauses in the covenant are far larger than those contained in the Universal Declaration, the Universal Declaration can be more easily invoked than can be the covenants.

As it is, the Soviet bloc with its reliance on the escape clauses, tended to reduce much of the Covenant on Civil and Political Rights to a nullity. In this context, Mr. Chairman, permit me to read to you an excerpt from a statement which I delivered at the CSCE Human Rights Experts Meeting in Ottawa in 1985, after the Polish delegation had sponsored a proposal dealing with the ratification of the covenants.

I offered an imaginary dialogue between a member of the Senate Foreign Relations Committee and myself, as if I were testifying in support of ratification. Here is what I said:

The Senator states: I want to draw your attention to Art. 8, Sec. 1(a) of the Covenant on Economic, Social and Cultural Rights, and Art. 22, Sec. 1 of the Covenant on Civil and Political Rights. The first of these reads as follows: "The states parties undertake to ensure the right of everyone to form trade unions, join the trade union of his choice, for the promotion and the protection of his economic and social interests."

The second reads as follows: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

I then have the imaginary Senator ask, "Now, isn't it true that Poland signed both of these covenants? And isn't it true that a free union movement was formed in Poland called Solidarity, with which almost half of the adult population of Poland affiliated itself? And isn't it also true that this free union movement has been ruthlessly suppressed? How does that square with the sections from the covenants which I have just read to you?"

My proposed answer was as follows: "What you say is true, but the Polish Government is relying on an escape clause in the covenants. In the Economic, Social and Cultural Covenant the escape clause reads as follows: 'No restrictions may be placed on the exercise of this right, other than those prescribed by law, and which are necessary in a democratic society in the interest of national security, public order, or for the protection of the rights and freedoms of others.' "

In the Civil and Political Covenant the escape clause is quite similar, it just adds the protection of public health or morals as justification for restricting the rights of labor unions.

The Senator's response in this imaginary conversation might be as follows: "What kind of quibble is this, Ambassador? Solidarity was a peaceful, unarmed movement, trying to exercise nothing by traditional labor union functions, and not even all of them. It was no threat to national security, or public order, or public health, or morals. And how do you protect what the covenants call a democratic society by suppressing democratic rights? Or can the covenants be construed to allow suppression of a peaceful labor union, in the interest of national security, if the threat comes not from the union, but from abroad?"

My answer could be the following: "Poland notified the U.N. Secretary General of its temporary derogation of the provisions of the Civil and Political Covenant stating the following, 'Temporary limitation of certain rights of citizens has been prompted by the supreme national interest. It was caused by the exigencies of adverting civil war, economic anarchy, as well as destabilization of the state and social structures. The purpose of the measures as introduced has been to reverse an exceptionally serious public emergency threatening the life of the nation and to create conditions to an effective protection of Poland's sovereignty and independence.' "

And, Mr. Chairman, I go on to discuss, basically, how given the covenants, loopholes are so large that you can really make most anything, justify most any action under them.

One other point in the Covenant of Civil and Political Rights that deserves additional comment is the work of the Human Rights Committee, which has been created under the provisions of the covenant. It is a committee with which each adherent to the covenant files periodic reports on human rights conditions. The committee then ask questions and discussions on possible human rights violations ensue. This is an interesting exercise which would be truly meaningful, if all participants were serious about the committee's work.

Unfortunately, some of the participants in the exercise have not been serious. It is for that reason that the value of the Human Rights Committee's work to date has been relatively limited.

Given the circumstances, Mr. Chairman, which I have laid before you, I believe that our total effort in the human rights field is not seriously impeded at the present time by our failure to have ratified the human rights covenants.

Thank you.

Chairman HOYER. Thank you very much, Mr. Secretary.

Mr. Secretary, when you say the document is still under review, and as you correctly point out, it has been under review now for 20 years, has the administration taken a position on the covenants themselves?

In our letter to Secretary Shultz, as you know, we requested the administration's position on their ratification. As I understand the thrust of your testimony with which I agree, those who sign documents disingenuously obviously weaken respect for those documents, because of their failure to accomplish the objectives for which they were drafted, and presumably signed.

But in terms of Senator Hatfield's testimony that you heard, in referring to a standard that is unrelated to the performance of "A" to "B," but related to the standard itself, has the administration taken any position at anytime on the covenants themselves and their applicability to the United States, and the consistency of U.S. policy with those standards?

In other words, what I am saying, Dick, I understand what you are saying, and I think the argument is relatively easy to make about abiding, as opposed to signing, or ratifying. Particularly with regard to the Civil and Political Rights Covenant, there obviously being an economic question in the United States about the guarantee of a right to a job, which is not our economic system. Has the administration concluded that it is not consistent with U.S. policy, would not be in the United States' best interest, and therefore, ought not to be ratified?

Secretary SCHIFTER. No, Mr. Chairman, it has not reached any conclusion. Since the issue has been raised I have looked into this, and it is my understanding that the understudy category means that at this particular point this administration has no position, one way or the other.

My understanding, further, is that legally the matter is before the Senate. And as a matter of fact, I checked on that this morning and my understanding is that legally it would actually take a resolution, a Senate resolution, to withdraw the treaties from the Senate.

Chairman HOYER. Let me ask you something, and you may or may not have sufficient knowledge, or feel comfortable in expressing your opinion on it. Is there any legal impediment to the ratification, and I speak first of the Civil and Political Covenant?

Secretary SCHIFTER. As I say, Mr. Chairman, I have looked into this. My understanding is that the answer to that is, No. It is very much in the hands of the Senate, if you ask the legal question.

Chairman HOYER. I am not asking the question as it relates to procedure. I understand your position is that the Senate now has it, and the Senate could act on it.

Secretary SCHIFTER. Clearly.

Chairman HOYER. From the administration's standpoint, not necessarily yours. I would take the position that the Democratically controlled Senate has it, and if they want to move it forward and send it to the floor, they can do that. I understand that.

My question though is: Is there any legal impediment from the U.S. constitutional legal perspective, from your perspective to impede ratification?

Secretary SCHIFTER. Let me put it this way, when the Carter administration submitted the covenants to the Senate for action, it recommended certain declarations, reservations, and understandings, which in the view of the Department of Justice during the Carter years, would take care of such legal concerns as we might have. I am not saying means that the Department of Justice today may be satisfied with these particular declarations, reservations, and understandings. They may want more, I don't know. The issue has not been posed.

Chairman HOYER. Thank you, Mr. Secretary.

Mr. Ritter.

Representative RITTER. Mr. Chairman, I have no further questions. Thank you, Mr. Ambassador.

Chairman HOYER. Thank you very much. I was just being told, it is my understanding, although we invited the Department of Justice to testify, that they declined. However, they have said that they would answer any questions that we send to them, and I think we will followup with that issue.

Clearly the thrust of my question, really the thrust of the hearing is: (A) should we ratify, and (B) what are the impediments, political, to such ratification. I, frankly, have not researched the record as deeply as I intend to before proceeding further. My bias is towards ratification. I do have some trouble—because the United States, when it ratifies things, hopefully, means what it says. Therefore, the Economic Covenant gives me more problems, in terms of the guarantees. If we made those guarantees, then we

may not really believe we can guarantee all that is put forward in the covenant.

I am going to ask another witness from a ratifying country, as to how they deal with that.

But, in any event, we are going to pursue it in that context.

Secretary SCHIFTER. I won't say even there you will find that, if you want to go down that particular road, there are reservations, understandings and statements that deal with the relationship between that covenant, the Economic, Social and Cultural Covenant, and the state of law in the United States.

Let me point out, as I have indicated in my statement, that in terms of priority, we sincerely hope—and this is by legislation, both before the House and the Senate, that action will indeed be taken that will finally make it possible for us to ratify the Genocide Convention.

Let me also say that another document that is coming along that is more clearcut, and we hope less controversial would be the Torture Convention. And we hope to be signing that very shortly, and that will be going up to the Senate as well.

So, in terms of what might be easier to tackle, please keep those two international conventions in mind.

Chairman HOYER. I thank you for the recommendation, and as a member of the Commission, I am sure you will make sure we do. In any event, we will pursue both of those for they are very important.

Secretary SCHIFTER. Thank you.

Chairman HOYER. Thank you very much, Mr. Secretary.

I would like to note the presence of two good friends, and outstanding leaders in our world really, Vladimir and Maria Slepak. We are very pleased to have both of you with us.

At this time I would like to ask Professor Rosalyn Higgins to come forward, who is a professor of International Law at the University of London and a member of the U.N. Human Rights Committee. She has authored a number of works on international human rights law, and is currently a Jennings Randolph distinguished fellow with the U.S. Institute for Peace. That institute is currently headed by Ambassador Samuel Lewis, our former Ambassador to Israel.

We are very pleased, Professor, to have you with us, and look forward to your testimony.

STATEMENT OF PROF. ROSALYN HIGGINS MEMBER OF THE U.N. HUMAN RIGHTS COMMITTEE

Professor HIGGINS. Thank you very much.

Mr. Chairman, I would like to begin by saying how greatly honored I am to be invited to give testimony to your Commission. The Committee is at the moment in session at the United Nations, and is aware that I have been invited here, and I know it appreciates the opportunity that a member can come and offer some views at these hearings.

What I have to say is limited to the Civil and Political Covenant, because it is on the Committee of that covenant that I serve. And of course, I would not presume to advise the United States on

whether it should, or should not ratify this covenant. But I will hope that my remarks might clarify how the covenant actually operates in the real world today, and not just focus on what it is that the text says. I think that is a very important element.

And of course I am aware of some of the concerns that have been in the minds of the Senate in the refusal to date, to go ahead with the ratification process. And my remarks will have those concerns in mind.

I begin by saying that I serve on the Committee as an individual expert, and not as the representative of my Government. Committee members are in practice nominated by their Governments, but are then elected by the states parties to the International Covenant for a 4-year term. And they may then stand for re-election. Once elected they serve in their individual capacity, and don't take instructions from their Government.

I do emphasize the integrity of the Committee, because it is critical to an understanding of how the system works under the Covenant on Civil and Political Rights. Unlike most U.N. bodies, the Committee is remarkably unfactionalized. It has a strong sense of unity, common sense of purpose and a public cohesiveness. As any state that is a party to the covenant can nominate a candidate for election, the nationalities of the members broadly reflect the distribution of the geographical pattern of ratification, though of course, each member must be an expert in the field of human rights.

At the present moment other Committee members come from Ecuador, Venezuela, Nicaragua, France, Sweden, Italy, Netherlands, Soviet Union, Poland, Yugoslavia, Egypt, Senegal, Kenya, Mauritius, Japan, Sri Lanka and Cyprus. Several Committee members are senior judges in their own countries, others are professors of criminal, constitutional, or international law; one member, from Kenya, is in private law practice, and two members are in their foreign service, the Venezuelan and Cypriot members, though they serve on this Committee in their personal capacity.

And that diversity of nationalities allows for a proper reflection of different legal systems and a proper understanding of different political and economic backgrounds. But the Committee itself is remarkably unpoliticized and takes a certain pride in its reputation as an international and impartial body of experts.

I think it is well known that the Committee has three functions, one of these is academic at the present time, its role in interstate complaints under Art. 41 of the covenant. No such complaints have been initiated and that doesn't seem likely in the immediate future. But the other two functions engage us heavily, dealing with state reports and determining the case law. Under an optional protocol, ratifying parties recognize the competence of the Committee to receive complaints from individuals within their jurisdiction who claim that their human rights under the covenant have been violated.

We do now have 40 state parties to this procedure, and we have reached the point, pretty much this session, where we have a steeply increasing number of cases. Our findings on these cases which we term "views," are published.

Not all of the signatories of the Helsinki Final Act have become parties to the covenant. For some, perhaps that is mostly a ques-

tion of status. Here I speak of the Holy Sea, Liechtenstein, Monaco and San Marino. But of course other reasons have to be looked for, for the nonratification of Malta, Switzerland, Turkey, and of course, the United States. All the East European parties to the Helsinki Final Act are parties to the covenant.

However, none of the East European states are a party to the optional protocol procedure. They do not allow the possibility of individual cases being brought against them. Several of the Western allies, who are signatories of the Helsinki Final Act are also parties to the optional protocol. That would be true of Austria, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway and Sweden.

A country, for example, like Norway, is a signatory of the Helsinki Final Act, the European Convention on Human Rights, which has an individual application procedure, and the International Covenant. So it exposes itself to possible scrutiny under all of them, and to individual complaints being brought under two of them, the European Convention and the covenant.

My own country, the United Kingdom, is also a party to all three, is exposed to international scrutiny under all three, and allows cases to be brought against it under the European Convention, but not for the moment under the covenant.

I now turn to the covenant itself, and leave aside the optional procedure. Under the covenant the main task of the Committee is to monitor compliance with the covenant through the examination of state reports. All states parties are required to submit reports: an initial report within 1 year, and periodic reports every 5 years. We believe the 5-year cycle about the right space of time, thus allowing the Committee to keep in touch with what is going on in the various countries, but allowing states a reasonable breathing space between their reporting obligations.

The initial reports are dealt with relatively briefly. They are studied by the individual members, who in turn make their observations and ask their question. An oral exchange with the state representatives then follows.

But the procedure for the subsequent, or periodic reports, is significantly different. We do there expect a very detailed examination. Shortly before a state's due date, the Committee draws up a key list of questions clustered around particular articles of the covenant. And these questions which are transmitted to the state concerned, are very country-specific. For example, this session, next week, the Australian delegate is being invited to discuss with us, "Whether it has envisaged that the Federal Affirmative Action, Equal Employment Act of 1986, will be extended to aboriginal peoples?" That will be one of the issues we want to talk about.

The listing for the recent Romanian examination, our latest East European examination, included the question:

> With reference to the statement in par. 143 of the report that there are no political prisoners in Romania, would the Government please explain the term "political prisoners" as understood in Romanian law, and interpreted by the Romanian authorities?"

I want to emphasize that the tone of the questions and comments is courteous and professional. States are not harangued or berated. That is not our style and we don't think it is productive. We try to

engage in what we term a constructive dialogue, a frank but polite exchange that encourages governments to think carefully about the points being put to them, in order to encourage and assist in the promotion of human rights. There may well be a place in the U.N. system for bodies that roundly condemn, or seek to rank states in order in a good human rights league, but that is not our role as lawyers. Our role is simply to ensure state by state that the covenant is being complied with.

It matters not to us that state X is generally a good human rights country, or that state Y is generally a human rights violator. We want to know from each of them about the protection in their country of the specific rights guaranteed in the covenant.

We take the reports strictly in the order that they are due and available. We don't single out problem states. A state that is invited to discuss its report with us knows that the reason is simply that the time has come around for that examination. There is no stigma attached, no adverse implication. Because we don't select problem states, or rank states in any priority, it follows that we deal with all states comparably. And that is, perhaps, sometimes a little uncomfortable for the better human rights states, including the Western liberal democracies. They will have to undergo the same examination as a state with a bad human rights record. Shortcomings under the covenant will be discussed and analyzed because our task is to assist in the implementation of human rights across the board, not just to improve human rights in the least compliant countries.

Any state becoming a party to the covenant must expect that equality of treatment. And indeed, we would say it is one of the strengths of our approach. I believe that the Western democracies who are parties to the covenant well understand that a firm and rigorous analysis of their own law and practice in human rights is the price they must pay for an international monitoring system in which other less observant states will participate. Moreover, there is no country in the world in which there is not some room for improvement.

Because we take the reports for examination in the order due, we don't seek in any one session a spread of countries across the regions for examination. That would be fortuitous. This present session we have had two African initial reports. Today we are continuing our hearings on Ecuador and we have hearing scheduled over the next 2 weeks on Australia and France.

Several of the Western Helsinki signatories have had their examinations during my period of membership of the Committee: the United Kingdom, Denmark, the Federal Republic of Germany, Sweden and Luxembourg. My impression is they found the examinations rigorous, but an interesting and worthwhile experience, and of assistance to them in ensuring that their treaty obligations are indeed being complied with.

The East European parties to the covenant do make a particular point of meticulous compliance with the procedural requirements. Their reports are detailed and almost invariably submitted on time. They readily attend the oral examinations and send rather high-level delegations for that purpose. My experience is those delegations are usually knowledgeable and well prepared. They don't

appear to resent or resist questioning from the Committee. That manifestly is a matter of coordinated East European foreign policy, and in my view is to be welcomed.

The Committee is of course well able to distinguish between laws on paper, and the reality in a given country. We issue guidelines to states for their reporting which makes it clear that we don't just want a list of legislation, we want to know about administrative practice, judicial decisions, general circumstances. In short, we want to know about substance, and not just the form.

The examinations of the East European countries has been probing and critical. At the same time the Committee doesn't treat political groupings of states monolithically. Our examinations are very country-specific. The situation in Hungary, for example, was significantly different from that of Czechoslovakia, although we had the state reports at the same session. The questions we wanted to ask the Ukraine, and the anxieties we wanted to express were not identical to different anxieties relevant to Poland.

A scrutiny of the records of the Committee would show detailed and persistent questioning put to all of these countries, and to others, too. And it would also show the criticisms advanced. There has been insistent interest in the Committee on issues relating to freedom of movement, the right to participate in political life, free speech, fair trial, freedom of opinion, the right to unionize, freedom of religion and other provisions under the covenant.

At the end of a state examination we don't issue a conclusion, it is not determined that state A secured 7 points out of 10, while state B gets only 4 out of 10. That is deliberate because our aim is simply to monitor and encourage compliance with the covenant in each and every state party.

It is quite clear from the comments made during the course of examinations what the Committee thinks about compliance in any given country.

The covenant I think represents a common understanding as to what basic rights persons are entitled to, regardless of their race, sex, or religion; regardless of the type of political society in which they live. The willingness of states to submit to third-party scrutiny in this regard is both a symbol of internal confidence, and an assistance in building a system that will allow monitoring worldwide, including in respect of those particular countries where it is most needed. My personal belief, Mr. Chairman, both as a Committee member and as a United Kingdom national, is that the United States should be part of this endeavor.

Thank you, sir.

Chairman HOYER. Thank you very much for your statement.

Let me ask you, do you meet in New York?

Professor HIGGINS. Mr. Chairman, we meet for one of our sessions—each of our sessions is 3 weeks long with a preparatory work week—we meet for one of our sessions in New York, and the other two sessions in Geneva.

Chairman HOYER. And all of those are 3-week sessions?

Professor HIGGINS. They are.

Chairman HOYER. So you have 9 weeks a year?

Professor HIGGINS. In fact, we have 3 full months a year, because we have a preparatory session in which some of us volunteer to do the initial preparatory work.

Chairman HOYER. So you have three 4-week sessions, essentially, with one being preparatory?

Professor HIGGINS. Yes.

Chairman HOYER. Now, you note in your statement that Bulgaria is an exception to the procedural unity that the East bloc complies with. What do you do as a result of Bulgaria's failing to report on time, or report completely?

Professor HIGGINS. Lateness of state reports is a considerable problem for us at the moment. What we do is when a state becomes significantly overdue, and by that I don't mean a few weeks, but significantly overdue, is that they are written to by the Secretariat and reminded of their obligations to put in that report. Most countries will then come along with their report, albeit somewhat overdue.

I have to say though that we have some who are persistent offenders. Some countries who have not even put in their initial report—and I could provide you with a list of those.

Chairman HOYER. Would you do that for the record, please?

Professor HIGGINS. I would do that for the record.

Chairman HOYER. Bulgaria, I take it, is one of those?

Professor HIGGINS. Bulgaria has put in its initial report, it is its second report that we are waiting for. But I must make the point again that it is not usually the East Europeans who fall into that category. It is, I regret to say, a spread of countries, including some Western countries, and some Third World countries where the problem mostly lies.

Chairman HOYER. You make an interesting comment in your report that I want to just ask you about, and I am quoting your statement—"The questions we wanted to ask the Ukraine, and the anxieties we want to express were not identical to those relevant to Poland."

Does the Committee treat the Ukraine as a separate entity, for the purposes of review?

Professor HIGGINS. We do. It is within the U.N. system treated as a separate state, and it has the capacity to be a separate ratifying party. However, within the Soviet Republic there is a lot of law that is in common, quite apart from the realities of where power may lie. So we are often looking at law that is common to any individual republic and the Soviet Union.

Chairman HOYER. Now, you say it is quite clear from the comments made during the course of the examinations what the Committee thinks about compliance in any particular country. So although you do not issue as you say, a report with its gradations, do you make conclusions that country "A" is not in compliance?

Professor HIGGINS. We don't make conclusions. The reality is we are 18 people from very different countries, and to get a common conclusion would probably involve a watering down, and we think that would be counter-productive. At the end of a session we go around the table and all members individually offer a summary of how they have found the examination experience, which is an ex-

perience that normally goes on about 2, 2½ days on subsequent reports.

So by reading that, one gets a sense of where the weight of opinion within the Committee is.

Chairman HOYER. Given that, can you characterize for me, or identify for me from your perception any results of these reviews?

Professor HIGGINS. It is very hard in specific terms to do so. Very occasionally we have a country coming back to us for a periodic report in which they will tell us in terms that they have changed a particular law or administrative practice, because of some incompatibility that was pointed out to them in the previous session.

For example, Senegal did that about restrictions on its right to emigrate, and that was encouraging for us to hear.

When Uruguay returned to democracy they came along and told us in some detail of things they had changed in the light of findings that had been made, this time in the case law, by the Committee.

Most usually though our task is more modest and we simply hope that by pressing in a knowledgeable way, we are putting in the minds of Governments that they are going to be publicly exposed on this issue, and adding an additional factor in the scale when they decide at any given moment as to how they behave on human rights issues.

Chairman HOYER. I am interested in why Great Britain has opted to apparently subject itself to the European Convention on Human Rights' review process, and not to the International Covenants review process?

Professor HIGGINS. If I can just clarify that, they are of course party to the review process. They are not party to the individual case procedure under the covenants. And to answer that question would take me a moment—I hope you will allow me. The United Kingdom almost alone of the European states, does not, as you know, have a written Constitution, and we do not have a domestic bill of rights.

The net result is that the international treaty obligations we have undertaken under the European Convention call for actions, as far as the individual is concerned, in the Human Rights Court in Strasbourg, rather than the courts in England. And the United Kingdom Government is there kept rather busy in front of that court. My feeling is that it feels that it is so sufficiently busy that it does not really wish to open up a second flank of litigation, feeling that for the main, the two instruments are so similar, and the machinery of the European Convention so effective in the sense that we do have to give effect to the findings of the court, that individuals can properly have their rights protected under the European Convention.

Chairman HOYER. Where is the hearing held under the covenant, the International Covenant, as opposed to the European Convention?

Professor HIGGINS. We do not have, in fact, the individuals appear before us, unlike Strasbourg, where they do appear with counsel. We do the cases all from written documents, and we are in touch with both government and the individual, or his, or her lawyer at the appropriate moments during the life of that dossier.

Chairman HOYER. Now, there are no Eastern states that submit themselves to the individual cases?

Professor HIGGINS. That's correct.

Chairman HOYER. Now, when you review the East or for that matter the Western nations, do your reports include specific cases, even though they are not subject to being raised individually in some sort of a judicial forum.

Professor HIGGINS. That is, if I may say so, an extremely interesting question to ask. We have to honor the distinction between the optional protocol and the covenant, and we have to accept that states are perfectly entitled not to ratify the optional protocol, the case procedure, if they choose. We must, therefore, not abuse that separate procedure by purporting to deal with individual cases, under the guise of our state reporting system.

On the other hand, where you have a pattern of individual cases that are "cases" only in the lay sense—endless imprisonment in psychiatric hospitals, problems of dissidents who are not allowed to speak freely, or practice their religion—we then sometimes do refer to those cases to people by name, but not in the sense of dealing with specific cases, and making a legal finding on it. Rather in the sense of pointing to a general practice that we feel falls properly within the state reporting proceeding.

Chairman HOYER. So as an example of a generic offense, I suppose, not as diplomatic a term as you would use——

Professor HIGGINS. That's right. These offenses are all said and done at the end of the day about individual people.

Chairman HOYER. You mentioned Senegal, and the changes that had occurred with reference to emigration. I am not familiar with the restrictions that Senegal placed on that, but would be interested in your observation as to how that relates to the restrictions placed, for instance, by the Soviet Union on emigration, and whether or not that question has been raised with the Soviet Union, as having been raised with Senegal, and if so, how it was resolved or responded to.

Professor HIGGINS. I mentioned in my introductory remarks that our questioning is very country-specific, and so, of course, it would be no surprise that the question of freedom of movement and freedom to leave is invariably one of the main areas of interest in our examination of the East European reports.

We were, in the last Soviet report, simply told that the law was in place to allow emigration, and that if the numbers were low, it was because, particularly the Jewish population, who wished to emigrate had now all emigrated and occasionally it was said that there was no reason for an honest citizen to wish to emigrate, because everything was available for that person within the Soviet society.

That, of course, was not satisfactory to members of the Committee.

In the more recent report——

Chairman HOYER. Professor, may I stop you there?

Professor HIGGINS. Please, Mr. Chairman.

Chairman HOYER. When you say it was not acceptable to the members of the Committee, I note that the Soviet Union has a

member on the Committee. Is there a vote taken on that issue, and if so, how closely divided is that issue?

Professor HIGGINS. Mr. Chairman, a vote is not taken, and it is again from a reading of the record that you get the sense of how the Committee feels. I should explain that the national of a state having its report examined does not normally participate in that procedure.

What I did want to go on to add, because I think it is interesting, is that our more recent East European reports are giving more sophisticated answers on the emigration question. First of all, the situation undeniably does seem to be improving in certain of the East European countries. And the emigration problem is not the same, for example, in Poland and Hungary, as it remains in Czechoslovakia and the Soviet Union.

But second, we now hear the emphasis more on questions of foreign currency problems and economic reasons. And I am cautious that we are beginning to move slowly in the right direction on that question.

Chairman HOYER. Pursuing a little bit the Romanian concept—not concept, comment, did you receive a response to your question about how the Government of Romania defines as political prisoners?

Professor HIGGINS. I have to say our responses were not very satisfactory. This was a state report in which we were frequently referred simply to the letter of the law. And Romania is one of the harder countries in which to get behind the law and get to the realities. It is one of the more difficult East European countries in that sense, although it is often not perceived as such, because in certain areas, for example, emigration, it has had a relatively better record than others. But it is a country in which some of its laws are, indeed, not even published. And so its own citizens don't know what is required of them.

And it was firmly pointed out how unsatisfactory that was.

Chairman HOYER. Professor Higgins, I think I could ask you a lot of questions, but in fairness to the next witness, and in recognition of the fact that we are going to conclude by 12:00, I am going to stop. However, before I do, I do want to ask you to sort of step out of your seat on the international commission, and return to your seat as a lawyer from Great Britain, and tell me whether you see any reasons for reservation by Great Britain of ratification of the International Covenant on Political and Civil Rights, however downside it may be?

Professor HIGGINS. I really don't, but the downside inevitably is that in areas of great sensitivity to us, for example, the problem in Northern Ireland is manifestly one, and the special legislation that we have in place regarding trials, for example, with regard to that problem, that there is going to be tough questioning on that. The Government is going to have yet another public hearing from an independent body in that area, and in any other areas in which perhaps its practice may be somewhat out of line with international instruments.

It is also a very time consuming process. This is, I think, the general downside. We do require the reports to be rather full, and we do require state parties to give up some time to be with us, and we

are not the only international body. They are having to make reports to a variety of other bodies that they themselves have set up, but now complain that they have to report to. So it is burdensome. But that is the downside. And I do believe it is the experience of my government that they believe the upside makes it very worthwhile.

Chairman HOYER. Professor, when is the next meeting in New York of your Committee?

Professor HIGGINS. Provided that the General Assembly indicates that there are the funds in hand for this, and as you know, the United Nation has its financial problems at the moment, the next New York meeting will be this time, a year hence. If there is a severe funding problem, we may find, as last year, that exceptionally all our meetings are in Geneva, which I am told is marginally cheaper.

Chairman HOYER. And when is your next meeting in Geneva?

Professor HIGGINS. Our next meeting in Geneva will be throughout the month of July.

Chairman HOYER. And are these meetings open to the public?

Professor HIGGINS. The meetings are indeed open to the public, and in the financial cuts that were imposed by the United Nations as part of its budgetary process, it was suggested that the detailed records of many U.N. bodies, including our own, be curtailed. We successfully resisted that, saying that the important thing was that people within the countries concerned should be able to read the criticisms made of their own countries in these open sessions.

Chairman HOYER. Professor, I very much appreciate you taking the time to be with us. Your prepared testimony of course will be in the record, and be made available to all of the members of the Commission. As you know, there are nine members of the Senate and nine members of the House, as well as Assistant Secretary Schifter who serve on the Commission. We very much appreciate your educating us on the operations of your Committee.

Thank you very much.

Professor HIGGINS. I am honored to have appeared, sir. Thank you.

Chairman HOYER. I would now ask to come forward Mr. Hurst Hannum, who has been executive director of the Procedural Aspects of International Law Institute since 1979. In that capacity he has been the principal author and project director of studies on international human rights law and U.S. constitutional law, the right to leave and return, and autonomy, sovereignty, and self-determination in international law.

Mr. Hannum, we appreciate you being with us, and look forward to your statement.

STATEMENT OF HURST HANNUM

Mr. HANNUM. Thank you very much, Mr. Chairman.

First, I would like to join Senator Hatfield in his expression of thanks to the Commission for being the first body in 8 or 9 years in the U.S. Congress to address this extremely important issue.

Chairman HOYER. Thank you.

Mr. HANNUM. It is unfortunate that Ambassador Schifter had to leave, because I think it is appropriate to begin my testimony, which I will summarize from my written statement, with a quote from the Ambassador in which he said on February 19:

> It is a fact that the world today continues to look to the United States for moral leadership in human rights. In this regard, I will simply say that U.S. implementation of the . . . [covenants] is important to the United States, and to those throughout the world that do look to this country for leadership and strength in the area of human rights. . . . Our friends expect no less of us. And for our adversaries, and those who believe that human rights are merely hollow words, . . . [ratification of the covenants] will eliminate the criticism that is now used to deflect attention from legitimate concerns over their own human rights abuses. These human rights violators have persistently levied unfair charges of hypocrisy or insincerity against the United States, and such criticisms have found their way into a variety of international fora. . . .
>
> It is time to put an end to such diversions. It is time for the United States to be able to preach what we already practice.

As noted in my written statement, candor requires me to admit that Ambassador Schifter was not speaking of the international covenants; in fact, he was referring to the implementing legislation for the Genocide Convention. However, I would suggest that these very strong and persuasive words are even more persuasive when applied to the fundamental international documents concerned with human rights which the Commission is considering today.

There are two possible reasons for the U.S. failure to ratify the covenants in the last 20 years. The first is what one might call substantive, that is, that somehow the rights set forth in the covenants are so different from rights guaranteed in the United States that it would be legally or morally impossible for the United States to ratify the covenants, because our views are so different.

The second possible reason is political, that the U.S. rejects the very principle of international definition of, and supervision over, human rights.

I don't think that it is worth taking your time, Mr. Chairman, to address in detail the substantive questions. As noted in passing by Ambassador Schifter, when the two covenants were submitted to the Senate in 1978, a series of reservations, declarations and understandings was attached to the covenants, in order to ensure that they would be consistent with U.S. law and practice.

It is clear that the covenants are, in fact, consistent with the basic principles of this country. An additional safeguard, if you like, was the declaration by President Carter that neither covenant would be considered to be self-executing, that is, that it would have no direct enforceability inside the United States. Provisions if the covenants could be raised in U.S. courts as persuasive authority, but they would not be binding rules of law.

Not a single responsible scholar has opposed ratification of the covenants on legal or substantive grounds.

As Ambassador Schifter noted, although since 1981 the Justice Department apparently hasn't looked at the covenants, no one in the Justice Department has suggested that there is any legal impediment to our ratification of the covenants.

Professor Higgins has very well described the relevant procedural requirements, were the United States to ratify, and these obvi-

ously do not present a particularly onerous burden on the United States, and, therefore, cannot excuse our nonratification.

One negative "substantive" point that might be mentioned is that nonratification prevents the United States from participating in these international bodies that are developing the content of international human rights law. The United States was a leader in drafting the Universal Declaration of Human Rights in 1948 and the two covenants in 1966. We have now lost the capacity of influencing the details of these covenants as they are defined through international practice.

However, the reasons that the United States has not ratified the covenants are neither substantive nor procedural. They are wholly political. During the past decade, and particularly since 1981, the United States has consistently rejected multilateral, as opposed to bilateral, efforts to secure universally accepted human rights norms. Indeed, I would suggest that the United States has come perilously close to rejecting the entire concept of international law.

The U.S. withdrawal from the compulsory jurisdiction of the International Court of Justice is but the most striking example of a bizarre unwillingness to submit either our ideas or our actions to international scrutiny. The unilateral refusal to pay our assessed dues to the United Nations, the illegal closing of the observer mission of the PLO to the United Nations, and the failure to ratify any multilateral human rights treaty in the last 20 years reflect, in my view, a neo-isolationism that arrogantly considers U.S. interests, as defined by the United States, to be beyond the reach of the international community.

Of the 22 major international human rights treaties for which statistics are regularly kept by the United Nations, the United States is a party to only six. Four of these deal with slavery, one dating from 1929; the fifth is the 1967 protocol relating to refugees; and the final one is a 1953 convention which prohibits discrimination against women in voting and holding public office. It took over two decades for the United States to ratify this last treaty.

The current administration should be congratulated on securing Senate consent to the Genocide Convention, although, as noted, the implementing legislation has yet to be adopted. However, not a single human rights treaty has been signed by the Reagan administration in 7 years, nor has any effort whatsoever been taken to secure approval by the Senate of any of the human rights treaties currently pending before it.

I would just mention in passing U.S. action with respect to the Torture Convention, which was alluded to by Ambassador Schifter. The United States was extremely active, and Ambassador Schifter himself played a very positive role, in securing U.N. approval of this convention in 1984. Yet it is now 1988, and the United States has not only not ratified the convention, but the President has failed even to sign the convention.

We have been hearing assurances from the State Department for 2 years that this would shortly be done. With all due respect to Ambassador Schifter, I must question whether the President will, in fact, sign the Torture Convention "very shortly" and submit it enthusiastically to the Senate for its ratification.

Ambassador Schifter mentioned, I think with some reluctance (although that may be only wishful thinking), that the two covenants are currently "under study" by this administration. It is difficult to respond to that assertion without being insulting. I would simply note that no one in the past 7 years has ever known the name of a single person in the Justice Department or the State Department whose task it was to undertake such a study.

With respect to the Economic, Social and Cultural Covenant, there is no study, because it is clear that this administration rejects the entire concept of economic, social, and cultural rights. The Country Reports on Human Rights Practices for 1986 made clear that all pretense of concern with economic, social and cultural rights has been abandoned. It may be worth citing the instructions sent by the State Department to U.S. Embassies for use in their preparation of the 1986 Country Reports:

> The USG [U.S. Government] has consistently taken the view that economic and social "rights" are aspirations rather than present obligations and as such are not included in our understanding of the meaning of the term "internationally recognized human rights".

To suggest that the Economic, Social and Cultural Covenant is under study at this stage is disingenuous at best, in light of these very forthcoming statements by the administration itself.

No such honesty has been forthcoming with respect to any of the other treaties pending before the Senate for ratification. While it is certainly true, as stated by Ambassador Schifter, that the Senate can at any time take up these treaties, that is unlikely to happen without the strong administration support that was evident with the Genocide Convention.

It is clear that this administration, and to some extent Congress as well, views human rights as a weapon in the ideological war, rather than as a truly universal obligation that we should be as concerned about in this country, as we are with respect to the Eastern bloc or our allies. This perception is re-enforced by the actions of many branches of government. For example, the primary country-specific initiatives taken by the United States at the U.N. Human Rights Commission, which recently finished meeting in Geneva, were with respect to (1) launching an attack on the human rights situation in Cuba, and (2) seeking to downgrade the United Nations' investigations of human rights in El Salvador and Guatemala. Individually these initiatives are certainly defensible, and no one would suggest that there are no human rights violations in Cuba. But they hardly promote an image of even-handedness or universality with respect to human rights.

The administration has conceded that the U.N. Commission on Human Rights is of little real value, yet at the same time it has also refused to take any steps to make those activities of the Commission more effective.

Unfortunately, at least some criticism should be addressed to this Commission as well. Its mandate, as I understand it, is to monitor the acts of all signatories to the Helsinki Final Act, yet, in practice, those activities have been limited to evaluating and criticizing the human rights performance of the Soviet Union and Eastern Europe. This policy, while understandable if one wishes to somehow rank human rights and focus on the areas of greatest

concern, again reinforces the perception that human rights is merely a tool in the American ideological arsenal. The one exception to this observation, a very significant one for which the Commission deserves great credit, is its willingness also to look at U.S. performance with respect to the Helsinki Agreement.

We must recognize that the promotion of international legal standards to protect human rights is not an important issue to congressional constituents. While individual situations of gross violations may be of great concern to segments of the American public, particularly those with ethnic or religious ties to the victims of those violations, few people care whether or not the U.S. ratifies a particular treaty or attempts to reform international procedures.

Thus, the failure of the United States to ratify the covenants that are the subject of these hearings does not reflect any particular antipathy to those two treaties. There are no logistical, procedural, substantive, or legal reasons that prevent that ratification. Rather nonratification simply follows the unhappy traditional, alluded to by Ambassador Schifter, of Senator Bricker and others in the 1940's and 1950's, who rejected international scrutiny of American blemishes, and in particular, international scrutiny of racial discrimination and segregation in this country.

The failure to ratify the covenants is consistent with today's fashionable denigration of the International Court of Justice, the United Nations, and other multilateral bodies, unless those bodies reflect the world in America's image. It is consistent with the U.S. invasion of Grenada and attempts to overthrow the regimes in Nicaragua and Panama.

Again, I don't wish to suggest that all of those acts are inappropriate, but they do underscore the bilateral, if not unilateral, approach of the United States to foreign policy in general and to human rights in particular.

Until this sort of arrogance decreases, until the United States is willing not only to serve as a model for human rights (and that is certainly a role that it should fulfill but is also willing to admit that the model can be improved by occasionally listening to the rest of the world, the covenants will simply be minor casualties on an ideological battlefield where we have abandoned moral legitimacy in favor of military license.

As has been noted, no one believes that mere signature or ratification of the covenants will improve the situation of human rights in the world, anymore than adoption of the 14th amendment to the U.S. Constitution eliminated racial discrimination in this country in 1868. However, it is the international acceptance of those norms that legitimizes and justifies U.S. interest in their enforcement, just as the proclamation of equality in 1868 justified the legal and moral claims that were not achieved until a century later.

The continued refusal of the United States to ratify formally such international standards, undermines its self-proclaimed morality and its commitment to the rule of law, rather than the rule of force.

Thank you, Mr. Chairman.

Chairman HOYER. Thank you very much for your statement.

The reservations expressed by the Justice Department at the time of submission of the treaty to the Senate—you mention of

course that they are not self-executing, to whit, one could not, I suppose, in a U.S. court proceed on the basis of the covenants themselves. That is the legal ramification is that it would have to rely on a substantively passed legislative act by the Congress. What were the reservations?

Mr. HANNUM. There was a whole series, and it would probably take more time than the Commission has to go through them. I would suggest that depending on the length of the record, the message of President Carter to the Senate, which contains the text of all of the reservations and declarations, might be attached to the record of these hearings. It has been out of print for quite some time now, and including the reservations, declarations and understandings to the record would be extremely useful, both to members of the Commission and to others.

Chairman HOYER. We will take that under consideration, I think that's a good suggestion—let me see the length of it, but I think we may want to put that as an appendix of the hearing.

Mr. HANNUM. I think I could at least mention two extremes of the reservations. The first refers to a provision in the Civil and Political Covenant that restricts propaganda that would promote war or racial hatred. It is almost certain that that would run afoul of the protection of free speech under the first amendment, so a reservation was submitted to insure that the first amendment would prevail (although under constitutional law that would be the case, in any event).

The other extreme was a rather infamous reservation that essentially would permit the United States to execute pregnant women and children. While the United States may not have any intention of doing that, there is a provision in the Civil and Political Covenant that prohibits the execution of those who were below the age of 18 when they committed a crime, or over the age of 70, or of pregnant women. Since that is slightly at odds with U.S. law, if not U.S. practice, a reservation was entered into with respect to that provision as well.

The goal was to ensure that both covenants were entirely consistent, not only with the U.S. Constitution, but also with the present state of U.S. law, and even with U.S. practice. The Justice Department seemed to think that it had succeeded in doing this. I, and others, criticized the scope of the reservations because they went beyond what was constitutionally necessary. Nevertheless, as I said, they seem to have achieved their purpose in ensuring that the covenants, if ratified with the reservations, declarations and understandings, would be entirely consistent with present U.S. law and practice.

Chairman HOYER. I would like to ask you some questions because of your experience with international organizations that are involved with the covenants. I am not as familiar with the process that Ms. Higgins has spoken of as I will become.

Can you tell me how useful do you find the reports, or hearings of Ms. Higgins' Committee?

Mr. HANNUM. I think it varies tremendously. The most utility that one can find in the activities of the Committee, with respect to the reports that all states have to file, is their use within the countries themselves. What has begun to happen is that, once a country

files a report, which is a public document, with the Human Rights Committee, nongovernmental organizations, in particular, have begun to take that report and send it back to the country of origin, so that local groups concerned with economic equality or civil rights in that country can prepare their own informal commentary on the report. These commentaries, which have no official status, may be given to members of the Human Rights Committee to help them in questioning the country's representatives, and they also may be used in domestic attempts to improve civil rights situations.

The purpose of international bodies like this, as I see it, is not to make declarations or arrive at decisions that a particular country has violated human rights. Rather, it is to put pressure on a national government from above, from the international level, which will correspond to pressure from below, coming from that government's own citizens, to improve economic, social, cultural, civil and political rights.

The required reports to various international bodies force countries to take human rights considerations into account in their formulation of foreign and domestic policy. This doesn't mean that they will abide by international norms, unfortunately, but the impact is a bit like the requirement in this country that the State Department produce annual country reports on human rights. Because those reports have to be filed, U.S. Embassies around the world have to be concerned with human rights.

Because reports have to be filed with the Human Rights Committee, justice departments, interior ministries, and foreign ministries have to be, to some extent, concerned with what international human rights standards are. When they say things that aren't true and make wild assertions of perfect compliance, it is then much easier for domestic groups, where they have that ability, to pressure their own government to live up to its international obligations.

In that sense, I think the value of the Committee can only continue to grow, as its work becomes better known.

Chairman HOYER. Secretary Schifter in his testimony referenced what he referred to as "escape clauses." He posed an example of, or an anecdote of a conversation between a Senator and himself, with respect to those escape clauses, and particularly, the example he used was of course Solidarity, and the guarantees for free association and trade union movement.

Would you comment on that aspect of the treaties, their escape clauses, how widely they are used, and what impact that has on the credibility of the covenants, irrespective of signature, one way or the other?

And let me say tangentially, I presume you would agree with Secretary Schifter, myself and others—because I don't really think it can be disagreed with—that really what one is looking for is compliance with principles, more than mere paper adoption of those principles.

I think that is a valid point that Secretary Schifter makes, and the United States makes, and therein the escape clauses, or lack of adherence to the principles embodied in the documents becomes increasingly important.

In that context I would like your comments on the Solidarity example in particular, where Poland clearly, from I think the perspective of the Commission, and of our country, was not in compliance with its own ratified document.

Mr. HANNUM. The first point that needs to be made is that the so-called "escape clauses" reflect the reality that exists in every country, including this one. For example, this country occasionally declares curfews in order to protect public health. It imposes restrictions, despite the first amendment's declaration that no law shall be passed abridging freedom of speech, on obscenity to protect public morals. In time of war, every country imposes restrictions based on national security.

All these acts are permitted by the words of the so-called escape clauses. If interpreted in good faith, they are not quite as broad a thoroughfare as Ambassador Schifter suggested. Nevertheless, they are constantly abused.

What I found somewhat strange was the implication of Ambassador Schifter that, because the Poles, for instance, were able to assert that their actions with respect to Solidarity were justifiable, that that assertion needed to be taken seriously. Every country will try to sneak away from its obligations, by misusing terms such as "national security." But it is not the country that has the final say as to whether the justification is legitimate. It is the role of the Human Rights Committee or other international bodies which consider assertions of limits based on "national security," for instance, to say, "We are sorry, but we don't accept your argument that this particular restriction is based on national security. Yes, the exception is there, but you are still in violation of your international obligations. Just because you use the appropriate words doesn't mean that we have to accept the abuse of the limited exceptions provided in the treaties."

In the early days of Secretary Abrams, I think, when he was Assistant Secretary for Human Rights, he used to argue with human rights groups by suggesting that "the best was often the enemy of the good." It seems that that is the argument that Ambassador Schifter is proposing, that because both the substance and the implementation procedures of the covenants are imperfect, somehow we shouldn't use them at all. While I would join him in most of his criticisms of the instruments, that doesn't seem to me to be an argument for U.S. abstention from the process of trying to make them work better.

As a lawyer, I certainly would agree with Ambassador Schifter that Poland and other countries have abused the escape clauses. However, they are only one party and not the judge, and they shouldn't be allowed to judge themselves.

Chairman HOYER. Now, let me say that I did not hear Secretary Schifter using that, per se, as an argument against ratification. To that extent, you and I may have heard it differently, because I think, frankly, Secretary Schifter stayed away from that argument one way or the other, based upon his representation of the administration at this time.

Mr. HANNUM. It is a very studious administration.

Chairman HOYER. Well, I guess that is one way to characterize it.

Let me ask you some questions about the economic covenant which seems to raise troubling questions in the West in terms of a free economic market system. What is your perception of the economic guarantees, that is the right to a job, which of course is not a right in the United States, in the sense of a legal right?

And I presume that is true in most West European nations as well. I should have asked Ms. Higgins more directly on this point.

But I would be interested in your view on that issue.

Mr. HANNUM. I think, first, it is important to be very clear about what the Covenant on Economic, Social and Cultural Rights requires. I would like to just quote very briefly from art. 2 which sets out the basic obligations:

> Each State Party to the present Covenant undertakes to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized . . . by all appropriate means, including particularly the adoption of legislative measures.

If one wants to refer to escape clauses, that is a very large one. What it requires is an immediate obligation to make progress, and it is, I would suggest, impossible for any international body to find a country in violation of this covenant very easily.

A second point is that most of what is in the covenant reflects policies that are very much a part of this country, at least since the days of Franklin Roosevelt. Such policies reflect the fact that people should not be unemployed, if we can help it: they should not starve; they should have adequate clothing and shelter. The Carter administration felt that the United States could comply with all of the provisions of the Covenant on Economic, Social and Cultural Rights, with a certain number of reservations, understandings, et cetera.

I think it is unfortunate that by attacking these rights, we have conceded the debate to Eastern Europe, if you will, which always claims that it is much more concerned with economic rights and social conditions than the United States and that capitalism is inherently evil and leaves people out in the cold to starve.

We only contribute to that argument by rejecting the concept of economic and social rights. Whereas, in fact, the protection of those rights in this country is certainly nothing to be ashamed of, in general, although it may not be as great as it might be. In fact, I think that international attention to, if not supervision of, the situation of economic and social rights in this country would be very helpful. There are going to be disagreements with the extent to which the Government should provide shelter, housing, or food, but these have been part of the domestic political argument for the last 40 years. I fail to see what we would lose by permitting them also to become part of the international debate.

Chairman HOYER. I have some other questions that I would like to perhaps ask you to respond to, if you would, in writing. Unfortunately, it is now 12:00, and I have to be someplace else. I could turn it over to Ambassador Wise, and he would do a very good job, but I won't do that.

Let me, however, make an observation. At least this member of the Commission, and I believe my Cochairman as well, Senator DeConcini, who leads this Commission, believe it is the responsibility of this Commission to look at all signatory states, including the

United States. Indeed, we have held hearings, as you probably know on the McCarran-Walter Act, which I believe to be in violation of certain of our international obligations. And I am, in fact, cosponsoring legislation as is Senator Moynihan and others in the Senate. That hearing was viewed as somewhat controversial, very frankly, by some of the members of this Commission, but I agree with your premise of what ought to be done, not necessarily what is being done. It is true that we treat our allies differently, which I think is understandable. You treat friends differently, and the closer friends they are, the more gingerly you deal with what you perceive to be violations.

Nevertheless, I believe this Commission is moving ahead, both in terms of our allies, and in terms of ourselves. And I believe it is an obligation of this Commission to be introspective, as well as to look to others to perform what we believe to be basic international and domestic obligations, vis-a-vis individual citizens.

I appreciate the observation, but I really do think we are doing, perhaps, more than you would observe.

Mr. HANNUM. If I could just add one final word. While I did voice some criticisms of the Commission, if, as it expands its activities, it acts in the same professional and competent manner that it has since 1976, it will have the possibility of truly contributing to human rights. Its work over the past 10 years really has been outstanding, and unfortunately it is nearly unique—I wish there were more bodies like it.

Chairman HOYER. Thank you.

Again, I want to welcome to the audience our friends, Vladimir and Maria Slepak, whose courage on behalf of human rights is in many ways unmatched by any of our witnesses in the past. And the Chair, as they both know, is a tremendous admirer of their efforts, and we appreciate their attendance at the hearing today.

The hearing is adjourned.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

APPENDIX A

The International Covenants on Human Rights: Prospects on U.S. Ratification

Hearing before the Commission on Security and Cooperation in Europe
29 March 1988

OPENING STATEMENT

HON. STEHY H. HOYER

FELLOW COMMISSIONERS AND DISTINGUISHED WITNESSES: I WANT TO WELCOME YOU TODAY TO THE COMMISSION'S HEARING ON THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS. THESE COVENANTS WERE SIGNED BY PRESIDENT CARTER IN 1977 AND TRANSMITTED TO THE SENATE FOR ADVICE AND CONSENT IN 1978. HOWEVER, THERE HAS BEEN NO FURTHER ACTION ON THEM SINCE THE SENATE FOREIGN RELATIONS COMMITTEE HELD EXTENSIVE HEARINGS IN 1979. WE HAVE CALLED THIS HEARING TO EXAMINE THESE TWO IMPORTANT TREATIES, THEIR RELEVENCE TO THE HELSINKI PROCESS, AND THE PROSPECT OF THEIR RATIFICATION BY THE UNITED STATES. AND WE WILL CONSIDER HOW RATIFICATION HAS AFFECTED -- IF IT HAS -- THOSE COUNTRIES WHICH HAVE BECOME PARTY TO THE COVENANTS OVER THE LAST 10 YEARS.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITCIAL RIGHTS AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS WERE ADOPTED BY THE UNITED NATIONS IN 1966. THESE TWO TREATIES WERE INTENDED TO BE, COLLECTIVELY, AN "INTERNATIONAL BILL OF HUMAN RIGHTS." THAT IS, THEY WERE INTENDED TO FURTHER DEFINE AND ELABORATE THOSE RIGHTS WHICH HAD ALREADY BEEN SET FORTH IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, WHICH IS ITSELF ONE OF THE MOST IMPORTANT HUMAN RIGHTS DOCUMENTS OF THIS CENTURY.

WE IN THE HELSINKI COMMISSION HAVE SOUGHT, THROUGH THE HELINKI PROCESS, TO INCREASE RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS BY THE 35 SIGNATORY STATES. THESE 35 NATIONS RECOGNIZE THAT THE ABILITY OF INDIVIDUALS TO EXERCISE EFFECTIVELY THEIR RIGHTS AND FREEDOMS IS ESSENTIAL NOT ONLY FOR THE FULL DEVELOPMENT OF THOSE INDIVIDUALS BUT ULTIMATELY TO PEACE AND COOPERATION IN EUROPE.

WHILE THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS DID NOT COME INTO FORCE UNTIL 1977, TWO YEARS AFTER THE SIGNING OF THE HELSINKI FINAL ACT, THE DRAFTERS OF THE FINAL ACT FORESAW THEIR RELEVENCE TO THE AIMS AND GOALS OF THE HELSINKI PROCESS. IN PRINCIPLE VII, THE SIGNATORIES OF THE FINAL ACT COMMITTED THEMSELVES TO "...ACT IN CONFORMITY WITH THE PURPOSES AND PRINCIPLES OF THE ... UNIVERSAL DECLARATION OF HUMAN RIGHTS [AND] FULFIL THEIR OBLIGATIONS AS SET FORTH IN...THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS, BY WHICH THEY MAY BE BOUND."

IT IS THIS PROVISION WHICH ALLOWS THE UNITED STATES TO RAISE ISSUES WITH OUR SOVIET COUNTERPARTS SUCH AS THE RIGHT TO EMIGRATE, A RIGHT WHICH IS NOT DIRECTLY INCLUDED IN THE HELSINKI FINAL ACT BUT WHICH IS SPECIFICALLY CODIFIED IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. IT IS ALSO THIS PROVISION WHICH PERMITS THE SOVIET UNION AND OTHERS TO RAISE THE UNITED STATES' FAILURE TO RATIFY THESE TWO COVENANTS AS A QUESTION OF OUR COMMITMENT TO HUMAN RIGHTS. THUS, WHILE THE COVENANTS ACT AS AN IMPORTANT SUPPLEMENT TO THE HELSINKI COMMITMENTS, OUR FAILURE TO RATIFY THEM GIVES THE SOVIETS AND OTHERS THE ABILITY TO AVOID THE ISSUE OF COMPLIANCE.

IT HAS SOMETIMES BEEN SAID, IN REPSONSE, THAT IT IS MORE IMPORTANT THAT THE UNITED STATES ACTUALLY COMPLY WITH THE COVENANTS THAN RATIFY, AS OPPOSED TO THE PRACTICE OF SOME STATES WHICH RATIFY, BUT FAIL TO COMPLY. I AGREE WITH THAT ARGUMENT, BUT WOULD ADD THAT WE ARE NOT FACED WITH HAVING TO CHOOSE BETWEEN THE TWO. THE UNITED STATES CAN BOTH COMPLY AND RATIFY.

THIS HEARING WILL RE-FOCUS ATTENTION ON THESE TREATIES. WE WILL LOOK AT THE IMPACT OF RATIFICATION ON OTHER HELSINKI SIGNATORY COUNTRIES AND EXAMINE THE QUESTION OF UNITED STATES RATIFICATION. I BELIEVE, THAT ON BALANCE THE UNITED STATES STANDS TO BENEFIT FROM RATIFICATION. IF RATIFICATION IS APPROPRIATE, THEN RENEWED ATTENTION MUST BE GIVEN TO MOVING THESE TREATIES FORWARD. IN ANY CASE, WE MUST EXAMINE OUR EXISTING COMMITMENTS AS SIGNATORIES TO HONOR THE OBJECT AND PURPOSE OF THESE TREATIES.

APPENDIX B

Testimony of Senator Claiborne Pell
Chairman, Senate Foreign Relations Committee
CSCE Hearing on the International Covenants on Human Rights
March 29, 1988

Mr. Chairman, as a former member and Co-chairman of the Helsinki Commission, I am very pleased to be here today to testify on the International Covenants on Human Rights. Too often, political expediency overshadows issues of fundamental human rights in our foreign policy. The Helsinki Commission plays an important role in ensuring that this does not happen.

I would like to commend you, Mr. Chairman, for holding this hearing on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It helps to focus attention on two treaties whose ratification is long overdue.

This is in fact the second time that I will be testifying on these Covenants. Almost nine years ago, I appeared before the Foreign Relations Committee as a witness representing the Helsinki Commission's views on the two Covenants. My testimony was part of four days of hearings on four international human rights treaties transmitted in February 1978 by the Carter Administration to the Senate. During those hearings, most of which I chaired, the Committee heard testimony from well over thirty witnesses and received written testimony from many others.

The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights represent the first efforts of the international community to give the full force

of international law to the principles of human rights embodied in the Universal Declaration of Human Rights. The Covenant on Civil and Political Rights is similar to our own Constitution and Bill of Rights in that it limits the power of the state over its citizens. The Covenant guarantees basic rights and freedoms such as freedom of thought, conscience and religion; freedom of speech, association, and movement; the right of privacy; and equal protection under the law. These guarantees are consistent with western liberal democratic traditions upon which our own nation was founded.

The International Covenant on Economic, Social and Cultural Rights seeks to enhance the quality of life for the individual by imposing affirmative obligations on the state. These obligations, or rights of the individual, include the right to work under safe, just and favorable conditions; the right to form and join trade unions and to strike; the right to an adequate standard of living and an education; and the right to self-determination. Each state is to pursue these objectives according to its capabilities and resources.

Because of concern about possible conflicts between the Covenants and our Constitution, the Carter Administration transmitted the Covenants to the Senate with the recommendation that certain declarations, understandings, and reservations be adopted in the resolution of ratification. In the main, these conditions related to protecting freedom of speech and the

principles of federalism, as well as requiring implementing legislation for the Covenants to enter into effect.

While the majority of witnesses supported ratification of the Covenants, one major area of controversy concerned the impact of the treaties on the right to hold private property. Conservative critics argued that private property rights were not adequately protected and that the Covenants should be amended to include an explicit statement of the right to own property and not have such property arbitrarily seized.

I believe that there was significant support for ratification of the Covenants. However, events at the end of 1979, including Senate consideration of the SALT II treaty and the Soviet invasion of Afghanistan, opposition from conservative elements over issues such as property rights, and preoccupation in 1980 with electoral politics, prevented the Committee from moving to a vote on the Covenants. Regrettably, the Reagan Administration, since coming into office, has made it clear that it does not want the Committee to act on these treaties.

I firmly believe today, as I did nine years ago, that both Covenants should be ratified. The reasons for ratification which I offered in my earlier testimony are equally valid today.

The United States has a long and proud record in the area of human rights. To be sure, it is not a record of perfection, but it is a record of a people who have worked and struggled to

overcome and resolve the injustices in their society. These injustices have not all been cured and the struggle for a more just society must continue. But when one looks around the world today, I believe we can say that Americans enjoy some of the most broad and secure human rights of people anywhere. Indeed, I believe that most Americans share Thomas Jefferson's sentiment that our country's "great experiment in republican government" would serve as a "standing monument and example for the aim and imitation of the people of other countries."

Our nation has been at the forefront of the international effort to promote and protect human rights. The United States was instrumental in shaping the Universal Declaration of Human Rights and in pressing for the negotiation of the two Covenants which we are now discussing. Within the East-West context, the United States has led the effort to promote Soviet and Eastern European compliance with the Helsinki Final Act. The United States has elevated human rights to a central position in our bilateral relations, often linking the extension of foreign aid to improvements in a recipient's human rights record.

The unfortunate fact is that our failure to ratify the Covenants has cast a shadow over our commitment to human rights. It has confused our friends and been exploited by our adversaries, particularly at review meetings of the Conference on Security and Cooperation in Europe. As I pointed out when testifying in 1979 on these Covenants, the Helsinki Commission always held the view that other Helsinki signatories,

especially those in the East, would better understand the depth of our concern for the full realization of the Helsinki pledges if we demonstrate that we are working hard at home to fulfill our side of the bargain. That is still true today.

Helsinki Final Act signatories pledged in Principle VII to "respect human rights and fundamental freedoms," to "act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights," and to fulfill their obligations "as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound." While the Final Act does not directly call upon signatories to become parties to these Covenants, clearly our failure to do so undermines the spirit of the Act. In addition, it weakens our ability to demand full compliance by the Soviet Union and its Eastern European allies with the provisions of the Final Act.

I believe that ratification of the Covenants would go a long way towards solving these problems. It would remove the blemish on our human rights record and be consistent with our history and traditions. As President Carter stated when he took the oath of office in January 1977, America's commitment to human rights "must be absolute." Ratification of these Covenants would help to achieve that all important goal.

Thank you, Mr. Chairman.

APPENDIX C

Statement of
Senator Mark O. Hatfield (R-Oregon)
Chairman of the Arms Control and Foreign Policy Caucus
in support of
Ratification of the United Nations Human Rights Covenants
before the
Commission on Security and Cooperation in Europe
March 29, 1988

Mr. Chairman:

Let me first thank you for convening this hearing and for the invitation to testify at it. I think you and the other distinguished members of the Commission have the ability to bring a tremendously important issue to the attention of the Congress and the Administration, and am very pleased to be part of your initiative.

I come before you to testify this morning as the Chairman of the Arms Control and Foreign Policy Caucus. The Caucus, founded almost 30 years ago as Members of Congress for Peace Through Law, is a bipartisan group of 130 members of the House and the Senate who do not always agree on specific issues but share a commitment to peaceful conflict resolution and human rights.

It is appropriate, then, that I testify this morning as a strong supporter of the ratification of the United Nations Convenant on Civil and Political Rights and the United Nations Covenant on Economic, Social and Cultural Rights. These covenants form an international bill of rights, a clear set of standards to which every person and every government in this world can and should refer.

Mr. Chairman, these covenants are nothing new. Adopted by the United Nations General Assembly in 1966, they entered into force in 1976 after 35 nations had ratified them. President Jimmy Carter signed them in 1977 and submitted them to the Senate in 1978 for its advice and consent. When hearings finally were held in the closing months of 1979, more than 50 people testified in favor of them --

including the United States Ambassador to the United Nations, the Director of the American Civil Liberties Union and the Chairman of Amnesty International. The Senate Foreign Relations Committee seemed ready to report the covenants favorably to the full Senate when the Soviet Union invaded Afghanistan. The covenants have not been discussed or debated since.

I find it ironic that the Soviet invasion of Afghanistan, one of the greatest human rights violations in recent history, sidetracked the debate in this country and in this Congress over ratification of these covenants. At the same time we criticize the Soviet action -- as well we should -- we stand defenseless to the charge that we have yet to ratify the most inclusive international human rights statement since the Universal Declaration of Human Rights was signed in 1948. Mr. Chairman, I believe that the stated commitment of the United States to human rights should stand second to none. Our ratification of these covenants is long overdue.

Let me go back for a moment to review the substance of these covenants. Perhaps a line from the preamble of both covenants is the best place to start: "in recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Starting from that premise, the covenants spell out the basic rights I believe should be guaranteed for every man, woman and child on earth.

The Covenant on Civil and Political Rights prohibits torture, arbitrary and inhuman punishment, slavery, and arbitrary arrest and detention. It provides for the freedom of movement and for the integrity of the judicial system. It expressly forbids arbitrary interference with family, home or correspondence, and guarantees the freedom of thought, conscience and religion, the right to peaceful assembly, and the right to take part in public affairs. In short, the Covenant on Civil and Political Rights represents the traditional Western view of human rights as incorporated in our Declaration of Independence and the United States Constitution as well as the political documents of Europe before them.

As important as these rights are, Mr. Chairman, they do not mean much if people cannot find enough to eat, a roof under which to sleep, a job or an education. Human rights must mean more that the absence of torture or the freedom from censorship, and the Covenant on Economic, Social and Cultural Rights was drafted in recognition of that fact. It guarantees the right to food, shelter, work and education. It guarantees the right to join or form a labor union, the right to social security, the protection of the family and the right to take part in cultural activities. In short, the Covenant on Economic, Social and Cultural Rights makes clear that human rights are linked inextricably with human needs.

"The numbers stand in long rows," writes Ruth Leger Sivard in the most recent edition of World Military and Social Expenditures, "like tombstones, monuments to lives lost to neglect: 100 million people have no shelter whatsoever, 770 million do not get enough food for an

active working life, 500 million sufffer from iron-deficiency anemia, 1.3 billion do not have safe water to drink, 800 million live in absolute poverty, 880 million adults cannot read or write, 10 million babies are born malnourished every year and 14 million children die of hunger."

These statistics, as appalling as they are, become even more so when you think about the individual men, women and children they represent. They also become very revealing.

We live in a world at war. 22 wars were underway at the beginning of this year, more wars than at any previous time in recorded history. In 1987, well over 2 million people died in these wars -- 84 percent of them were civilians. This is a world at war, Mr. Chairman, because this is a world full of hunger and homelessness, full of repression and exploitation. As a nation, we must recognize that fact and those needs -- not only because we are morally obligated to do so, but also because the success of our foreign policies depends on it.

When I was invited to testify at this hearing, Mr. Chairman, I began to think about my own views on human rights and the relationship of those rights to the success of our foreign policies. At this point, I would like to share some of my thoughts with you.

Two of the most often-cited United States foreign policy disasters in recent years are Iran and Nicaragua. Both are countries which had a strong relationship with the United States a decade ago. Indeed, both were our most trusted ally in their respective region. Today, they are our fiercest enemy in the same regions. Iran even goes so far as to celebrate "Death to America Day." The reason why these two countries turned on us -- beneath the layers of debate over capitalism and communism, over fundamentalism and progressivism -- has more to do with human rights than with anything else. The truth of the matter is that our close allies -- the Shah of Iran and Anastasio Somoza -- brutally suppressed their opponents and used their power to become very wealthy while the vast majority of their people toiled just for
enough to eat.

There are those today who suggest that both leaders fell because the United States abandoned them. I reject that notion. What the United States did was recognize the increasing unpopularity of these leaders, an unpopularity bred in large part of years and years of institutionalized human rights violations. That recognition, combined with a President who had a genuine personal commitment to human rights, led us to rethink our previously unquestioned support for the leaders and their rule. The problem was that it was too little, too late. The popular resentment of the leaders, and of the United States for supporting those leaders and their brutal regimes for so long, had gone too far. In Iran and in Nicaragua, revolution was inevitable.

The lesson to be learned from Iran and Nicaragua is not that we should keep our mouths shut when our allies -- even our closest allies -- violate basic human rights. Indeed, the lesson is just the

opposite: we must state our commitment to human rights strongly and honestly to friend and foe alike. And to our friends, our allies, we must do it before revolution is inevitable. I am convinced, Mr. Chairman, that the success of our foreign policies depends on it.

These covenants were first adopted by the United Nations General Assembly the year I was first elected to the Senate. A lot of lives have been lost in this troubled world since then, a lot of lives of a lot of people whose genius and compassion were taken for no legitimate reason at all. A lot more people have been denied the rights we consider inalienable -- the right to eat, the right to read, the right to speak, the right to worship and the right to their own bodies. No legitimate reason exists for their denials either.

I do not mean to suggest that our ratification of two covenants, regardless of how important they are, will change the world overnight. It will not. What I do mean to suggest is that our ratification of these two covenants would send a strong signal -- a signal that, in the midst of hunger and homelessness, repression and exploitation, we will champion the fundamental importance of human rights.

Mr. Chairman, the ratification of these covenants will only be possible if we in the Congress have the political will to do it. Unfortunately, we all too often muster the political will for weapons of war but fail to find it for weapons of peace. That is exactly what these covenants are -- weapons of peace.

I was pleased to learn that Senator Claiborne Pell -- the chairman of the Senate Foreign Relations Committee -- and Congressman Dante Fascell -- the chairman of the House Foreign Affairs Committee -- have agreed to testify in support of these covenants. Their support for them, and the convening of this hearing, suggest to me that the necessary political will just might be here this time. I hope it is, and look forward to working toward ratification with the members of this Commission and my distinguished colleauges in the months ahead.

APPENDIX D

SENATOR ALFONSE D'AMATO
OPENING STATEMENT FOR
HELSINKI COMMISSION HEARING ON
INTERNATIONAL COVENANTS ON HUMAN RIGHTS:
PERSPECTIVES ON U.S. RATIFICATION

MR. CHAIRMAN:

I WANT TO BEGIN BY THANKING YOU AND OUR DISTINGUISHED CO-CHAIRMAN, SENATOR DECONCINI, FOR SCHEDULING A HEARING ON THE IMPORTANT TOPIC OF U.S. RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS. I BELIEVE IT IS TIMELY TO EXPLORE THIS ISSUE AND I LOOK FORWARD TO LEARNING THE VIEWS OF OUR DISTINGUISHED WITNESSES ON THIS MATTER.

PRESIDENT CARTER SIGNED BOTH THE COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS. THE SENATE HAS NOT ACTED ON EITHER COVENANT, EVEN THOUGH HEARINGS WERE HELD IN 1979 ON BOTH OF THEM.

AS THE FORMER CHAIRMAN OF THE COMMISSION, I ATTENDED A NUMBER OF HELSINKI PROCESS MEETINGS AND HEARD DELEGATES FROM WARSAW PACT STATES ATTACK THE UNITED STATES FOR HAVING FAILED TO RATIFY THESE COVENANTS. IT IS IMPORTANT THAT WE TAKE TIME TO LOOK AGAIN AT THE COVENANTS AND DISCUSS WHAT CAN AND SHOULD BE DONE.

THIS MORNING'S WITNESSES ARE UNIQUELY QUALIFIED TO DISCUSS THIS ISSUE. AMBASSADOR SCHIFTER, AS HEAD OF THE U.S. DELEGATION TO THE OTTAWA HUMAN RIGHTS MEETING IN THE HELSINKI PROCESS, HAD TO CONFRONT THESE WARSAW PACT CHARGES FIRST HAND. SINCE THEN, AS HEAD OF THE STATE DEPARTMENT'S BUREAU OF HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, HE HAS HEARD THESE COMPLAINTS AGAIN AND AGAIN.

CHAIRMAN FASCELL IS THE FOUNDING CHAIRMAN OF THIS COMMISSION. HE HAS UNQUESTIONED AUTHORITY AND EXPERIENCE DEALING WITH THIS ISSUE. HIS REMARKS, AS WELL AS THE VIEWS OF MY DISTINGUISHED COLLEAGUE IN THE SENATE, THE SENIOR SENATOR FROM OREGON, MARK HATFIELD, WILL SERVE US WELL AS WE JUDGE OUR COURSE OF ACTION ON THESE COVENANTS.

I LOOK FORWARD TO HEARING FROM THEM AND FROM MR. HANNUM AND MS. HIGGINS, WHO ARE EXPERTS ON INTERNATIONAL LAW AND HUMAN RIGHTS.

THANK YOU.

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APPENDIX E

ORAL REMARKS OF PROFESSOR ROSALYN HIGGINS QC
MEMBER, HUMAN RIGHTS COMMITTEE

I am the United Kingdom member of the United Nations Committee on Human Rights. I am also Professor of International Law at the University of London, a member of the bar and a Queen's Counsel. I am also a past Vice-President of the American Society of International Law and a former member of the Board of Editors of the American Journal of International Law. I was educated at Cambridge University and at Yale Law School.

I serve on the Human Rights Committee as an individual expert and not as the representative of my Government. Committee members are in practice nominated by their Governments and then are elected by the States parties to the International Covenant on Civil and Political Rights for a four year term. They may stand for re-election. Once elected, they serve in their individual capacities and do not take instructions from their governments. It is of course normal to maintain a certain contact with one's government, who naturally wish to understand as well as possible the workings of the Committee. That contact is perfectly acceptable, even though in our work we are not answerable to our governments and receive no directives or suggestions from them.

I emphasize the integrity of the Committee, because it is critical to an understanding of how the system works under the Covenant on Civil and Political Rights. Unlike most United Nations bodies the Committee is not factionalized. It has a strong sense of unity, a common sense of purpose, and a public cohesiveness. As any state that is a party to the Covenant can nominate a candidate for election, the nationalities of the candidates broadly reflect the distribution of the geographical pattern of ratification of the Covenant - though each member must of course be an expert in the field of human rights. Other Committee members come from Ecuador, Venezuela, Nicaragua, France, Sweden, Italy, Netherlands, Soviet Union, Poland, Yugoslavia, Egypt, Senegal, Kenya, Mauritius, Japan, Sri Lanka and Cyprus. Several Committee members are senior judges in their own countries; others are professors of criminal, constitutional or international law; one member (from Kenya) is in private law practice; and two members are in their foreign service (the Venezuelan and Cypriot members), though serving on this Committee in a purely personal capacity.

This diversity of nationalities allows for a proper reflection of different legal systems and a proper understanding of different political and economic backgrounds. But the Committee itself is remarkably unpoliticized and takes a certain pride in its reputation as an international and impartial body

of experts. The work of the Committee is not at all characterized by arguments between its members, reflecting national viewpoints. On the contrary, there is a strong sense of Committee unity that cuts across the different nationalities.

As is well known, the Committee has three main functions. One of these is academic only at the present time, in the sense that it has a role in interstate complaints under the special procedures of Article 41 of the Covenant. No such complaints have been initiated and there seems no immediate likelihood of this aspect being developed. But the Committee is heavily engaged in its two other functions - dealing with state reports and determining its case law. Under an Optional Protocol, ratifying parties recognize the competence of the Committee to receive complaints from individuals within their jurisdiction who claim that their human rights have been violated. Some 40 states have become parties to this procedure, and the Committee is now dealing with a steeply increasing number of cases. Its findings, termed "Views", are published - both the decision on admissibility and the findings on the merits. We hope that this case law is making a contribution to the formulation of specific legal norms on human rights.

Not all the signatories of the Helsinki Final Act have become parties to the Covenant. For some, this is perhaps a question of international status - I refer to the Holy See, Liechtenstein, Monaco and San Marino. But other reasons must be found for the non-ratification of Malta, Switzerland, Turkey and, of course, the United States. All the Eastern European parties to the Helsinki Final Act are parties to the Covenant.

However, none of the East European states is a party to the Optional Protocol procedure under the Covenant - that is to say, they do not allow the possibility of individual cases being brought against them. However, several of the Western allies who are signatories of the Helsinki Final Act are also parties to the Optional Protocol. This is true of Austria, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway and Sweden. (Some of these countries will also be parties to the procedures which allow individual cases to be brought under the European Convention on Human Rights.) Thus a country like, for example, Norway, is a signatory of all three instruments (Helsinki, the European Convention on Human Rights and the International Covenant on Civil and Political Rights) and exposes itself to the possibility of scrutiny under all of them and to individual complaints being brought under two of them (the European Convention and the Covenant). My own country, the United Kingdom, is a signatory of all three, is exposed to scrutiny under all three, and allows cases to be brought against it under the European Convention; but not for the moment under the Covenant also.

Because the possibility of individual cases being brought under the Covenant is an optional procedure, I will now concentrate rather on the Covenant itself. The main task of the Committee under the Covenant is to monitor compliance with the Covenant through the examination of state reports. All States parties are required to submit reports - an initial report within one year of ratification, and periodic reports every subsequent five years. The five year period was set by the Committee, and is not to be found in the text of the Covenant itself. We believe the five year cycle about the right space of time, both allowing the Committee to keep in touch with developments within the various countries but also allowing states a reasonable time between reports.

Initial reports are dealt with relatively briefly by the Committee. They are studied by the individual members, who then, in turn, make their observations and ask their questions. An oral exchange with the state representatives then follows. The procedure for subsequent, or "periodic", reports is different. The Committee then expects a very detailed examination. Shortly before a state's due date for examination the Committee draws up a key list of questions, clustered around the particular articles of the Covenant. These questions are very country specific. For example, this session the Australian delegation is being invited to discuss with us "whether it is envisaged that the federal Affirmative Action (Equal Employment) Act 1986 will be extended to aboriginal peoples?" The listing for the recent Romanian examination included the question "With reference to the statement in paragraph 143 of the report that there are no political prisoners in Romania, would the Government please explain the term 'political prisoners' as understood in Romanian law and interpreted by the Romanian authorities".

These listed questions, which the state concerned receives in advance of the oral examination, provide the framework for discussion but do not inhibit members from raising any issue. I want to emphasise that the tone of the questions and comments is courteous and professional. States are not harangued or berated. That is not our style and we do not think it productive. We try to engage in what we term "a constructive dialogue" - frank but polite exchanges that encourage governments to think carefully about the points being put to them, in order to encourage and assist in the promotion of human rights. There may well be a place in the United Nations system for bodies that roundly condemn, or seek to rank states in order in a 'good human rights league' - but that is not our role as lawyers. Our role is simply to ensure, state by state, that the Covenant is being complied with. It matters not to us that state X is generally a 'good human rights country' or that State Y is generally a human rights violator. We will want to know from each of them about the protection in their country of the rights guaranteed in the Covenant.

We take the state reports strictly in the order that they are due and available. We do not single out "problem" states. A state that is invited to discuss its report with us knows that the reason is simply that the time has come around for that examination. There is no stigma attached, no adverse implication. Because we don't 'select problem states' or rank states in any priority, it follows that we deal with all states comparably. That is perhaps sometimes a little uncomfortable for the better human rights states, including the Western liberal democracies. They will have to undergo the same examination as a state with a bad human rights record. Shortcomings under the Covenant will be discussed and analysed, because our task is to assist in the implementation of human rights across the board, not just to improve human rights in the least compliant countries. Any state becoming a party to the Covenant must expect that equality of treatment. Indeed, we would say that it is one of the strengths of our approach. I believe the Western democracies well understand that a firm and rigorous analysis of their own law and practice on human rights is the price they must pay for an international monitoring system in which other less observant states will participate. Moreover, there is no country in the world in which there is not room for some improvement.

Because we take the reports for examination in the order due, we do not seek in any one session a 'spread' of countries for examination. We could fortuitously have four or five reports (our normal number in a three week session) from different regions/political philosophies. But equally, the distribution could be more clustered. Recently the examination of Czechoslovakia and Hungary happened to fall in the same session. This present session we have two African initial reports, and the periodic reports of Australia, France and Ecuador.

Several of the Western Helsinki signatories have had their examinations during my period of membership of the Committee - the United Kingdom, Denmark, the Federal Republic of Germany, Sweden and Luxembourg. My impression is that they have found the examinations an interesting and worthwhile experience, and of assistance to them in ensuring that their treaty obligations are indeed being complied with.

The Eastern European parties to the Covenant make a particular point of meticulous compliance with the procedural requirements. Their reports are detailed and almost invariably submitted on time. They readily attend the oral examinations of these reports, and send high level delegations for this purpose. My experience is that these delegations are usually very well prepared and knowledgeable. Their approach is not to resist or resent questioning from the Committee, but to participate fully in the procedures. This is clearly a matter

of coordinated Eastern European foreign policy and in my opinion is to be welcomed. (The exception is Bulgaria, from whom we have yet to receive a second report that we can examine.)

The Committee is of course well able to distinguish between laws on paper and the reality in a given country. The guidelines which we have issued to states for their reports make it clear that we want to hear not only about legislation, but about administrative practices, judicial decisions and general circumstances that are relevant to the implementation of the Covenant. In short, we are interested in the substance and not just the form.

The examinations of the Eastern European countries have been probing and critical. At the same time, the Committee does not treat political groupings of states monolithically. Our examinations are country-specific. The situation in Hungary, for example, was significantly different from that in Czechoslovakia. The questions we wanted to ask the Ukraine, and the anxieties we wanted to express, were not identical to those relevant to Poland. A scrutiny of the records of the Committee would show detailed and persistent questioning put to all these countries - and to others too. It would also show the criticisms advanced. There has been insistent interest in the Committee on issues relating to freedom of movement, the right to participate in political life, free speech, fair trial, freedom of opinion, the right to unionize, freedom of religion and other provisions under the Covenant.

At the end of a state examination the Committee does not issue a "conclusion". It is not determined that state A has secured 7 points out of 10, while state B has achieved only 4 points out of 10. That is deliberate - because our aim is simply to monitor and encourage compliance with the Covenant in each and every state party. We would not accept that the absence in our system of a mechanism whereby a repressive country is given a 'low ranking' after an examination means that it 'is being allowed to get away with it'. It is quite clear from the comments made during the course of the examinations themselves, what the Committee thinks about compliance in any particular country.

The Covenant represents a common understanding as to what basic rights persons are entitled to, regardless of their race, sex or religion, and regardless of the type of political society in which they live. The willingness of states to submit to third-party scrutiny in this regard is both a symbol of internal confidence and an assistance in building a system that will allow monitoring world-wide, including in respect of those particular countries where it is most needed. My personal belief, both as a Committee member and as a United Kingdom national, is that the United States should be part of this endeavour.

APPENDIX F

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Hearings on

The International Covenants of Human Rights

29 March 1988

Statement of Hurst Hannum

I very much appreciate the opportunity to testify before the Commission today on the important issue of U.S. ratification of the two most significant international human rights treaties, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. I have been active in international human rights law since graduating from the University of California's Boalt School of Law in 1972 and have acted as legal counsel in cases before the European Commission on Human Rights, Inter-American Commission on Human Rights, and United Nations. I am currently Executive Director of the Procedural Aspects of International Law Institute and a member of the Advisory Council of the International Human Rights Law Group, legal advisor to the Cambodia Documentation Commission, and Adjunct Professor teaching international human rights at the University of Virginia and American University law schools; for four years, I was a member of the Board of Directors of Amnesty International-USA and am now Chairman of its National Legal Advisory Council.

While the Commission on Security and Cooperation in Europe does not play a formal role in the treaty ratification process, both its membership and its activities during the past decade attest to its importance in the promotion of internationally recognized human rights, albeit in a restricted geographical context. Indeed, the Commission's work in monitoring and encouraging compliance with the Helsinki Final Act represents the only regular U.S. participation in a multilateral forum primarily concerned with human rights, with the exception of the annual meetings of the UN Commission on Human Rights and single-focus organizations such as the International Labor Organization.

As stated only a few weeks ago by the Assistant Secretary of State for Human Rights:

> It is a fact that the world today continues to look to the United States for moral leadership in human rights. In this regard, I will simply say that U.S. implementation of the... [Covenants] is important to the United States and to those throughout the world who do look to this country for leadership and strength in the area of human rights....
>
> Our friends expect no less of us. And for our adversaries, and those who believe that human rights are merely hollow words,... [ratification of the Covenants] will eliminate a criticism that is now used to deflect attention from legitimate concerns over their own human rights abuses. These human rights violators have persistently levied unfair charges of hypocrisy or insincerity against the United States, and such criticisms have found their way into a variety of international fora such as the United Nations General Assembly, the U.N. Human Rights Commission, the human rights discussions of the Conference on Security and Cooperation in Europe... and other bodies. It is time to put an end to such diversions. It is time for the United States to be able to preach what we already practice.[1]

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1 Prepared statement of Richard Schifter, Assistant Secretary of State for Human Rights, before the Senate Committee on the Judiciary, 19 Feb. 1988. In fairness, it should be noted

(continued...)

Despite such sentiments, the United States is yet to become a party to either Covenant, 22 years after their unanimous adoption by the UN General Assembly and 12 years after their entry into force. As of September 1987, there were 90 parties to the Covenant on Economic, Social and Cultural Rights and 86 parties to the Covenant on Civil and Political Rights; of the signatories to the Helsinki Final Act, only Monaco, the Holy See, and the United States have not ratified either the Covenants or the European Convention on Human Rights.

As the Commission is well aware, the Covenants (along with the American Convention on Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination) were submitted to the Senate for its advice and consent by President Jimmy Carter in February 1978. The Senate Foreign Relations Committee held hearings on the four treaties in November 1979, but no further action has been taken since that time under either Democratic or Republican leadership.

There are two possible reasons for this lack of activity and failure to ratify, despite the overwhelming international support for the Covenants from nations belonging to all regions and espousing all political philosophies. The first is substantive, i.e., that the Covenants express values and standards that are so contrary to U.S. constitutional law and practice that the United

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1(...continued)
that the Secretary's statement referred to legislation to implement the Genocide Convention (S. 1851) and not to the Covenants; I would suggest, however, that the logic behind the words should be equally (if not more) applicable to the latter.

States is unable honestly to ratify them. The second is political, i.e., that the U.S. government rejects the fundamental concept of binding multilateral obligations in the field of human rights and that, absent a strong domestic constituency concerned with human rights or international law, neither the administration nor the Senate is willing to exercise leadership on this issue.

Substantive and Procedural Issues

The possible substantive legal concerns raised in the Covenants were addressed in detail by a number of reservations, understandings, and declarations recommended in President Carter's transmittal of the treaties to the Senate and by the 38 witnesses who testified before the Foreign Relations Committee during the 1979 hearings. As noted in the document prepared by the Commission's staff, only three individuals and not a single organization opposed ratification of both Covenants.

The intent of the reservations, declarations, and understandings attached to the Covenants by the Carter administration was to minimize or eliminate the substantive impact of the Covenants on domestic U.S. law. The Department of Justice concluded that "there are no constitutional or other legal objections to United States ratification of the treaties."[2] In addition, the President's Message declares that the Covenants

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2 Message from the President, Four Treaties Pertaining to Human Rights, Exec. C, D, E, and F, 95th Cong., 2d Sess. (1978) at vi.

are not "self-executing," i.e., that they do not create rights which may be directly invoked or enforced in U.S. courts.

Even without direct applicability, the Covenants may have an impact on the interpretation of U.S. laws, insofar as courts will presume that domestic legislation is consistent with U.S. international obligations, absent a clear intention to the contrary. Thus, for example, the arguably broader international prohibition against "inhuman or degrading treatment or punishment" contained in the Covenant on Civil and Political Rights might be utilized to "inform" or "infuse" a court's interpretation of the similar prohibition in the Eighth Amendment against "cruel or unusual punishment." However, the declaration that the Covenants are non-self-executing will prevent them from being used as binding rules of decision in domestic cases.

I would not agree with every limitation proposed by President Carter, nor with the assumption that a limitation is necessary whenever a provision of the Covenants may be inconsistent with current U.S. practice (as differentiated from preserving conformity with U.S. constitutional standards). In any event, not a single reputable scholar opposes ratification of the Covenants on legal grounds.

Reporting obligations

Were the U.S. to become a party to the Covenants, it would accept certain procedural obligations, in addition to the fundamental obligation to respect the rights guaranteed in the

treaties. These procedural requirements are hardly onerous, and it cannot be suggested that they excuse non-ratification.

The primary procedural obligation of the United States under each Covenant is to file regular reports "on the measures... adopted which give effect to the rights recognized... and on the progress made in the enjoyment of those rights."[3] These "article 40 reports" filed by parties to the Covenant on Civil and Political Rights have ranged from only a few, conclusory pages (criticized by the Committee for their lack of information as to the actual practice within a country) to thorough expositions, such as that submitted by Canada, which can run to hundreds of pages and offer a detailed explanation of the ways in which Covenant-guaranteed rights are protected.

Under the Covenant on Civil and Political Rights, these reports would have to be filed by the U.S. within one year of the Covenant's entry into force and every five years thereafter. The normal practice of the oversight body, the Human Rights Committee, is to pose oral questions to government representatives when a country's report is under consideration, in the course of public (although unfortunately poorly attended) sessions. The Human Rights Committee holds three sessions of approximately three weeks every year, in Geneva or New York. A short resume of the exchanges between Committee members and the government is included in the Committee's annual report to the

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3 Covenant on Civil and Political Rights, art. 40(1). Similar language is found in art. 16(1) of the Covenant on Economic, Social and Cultural Rights.

General Assembly, and the discussions also are reported more extensively in summary records of the sessions. Thus far, the Committee has interpreted its authority to make "general comments" under article 40(4) of the Covenant as not extending to country-specific observations, although individual Committee members may be very direct and critical in their questioning.

The supervisory mechanism under the Covenant on Economic, Social and Cultural Rights has undergone several incarnations, and, in 1985, the UN Economic and Social Council (the body responsible for overseeing implementation of the Covenant) finally created an individual expert body [referred to herein as the "Ecosoc Committee"] similar to the Human Rights Committee.[4] Article 17 of the Covenant provides that reports are to be furnished "in stages," and there is presently a rather complex six- or nine-year cycle for government reports, each of which addresses one of three "clusters" of rights set forth in the Covenant. Like the Human Rights Committee (when it considers article 40 reports), the Ecosoc Committee has no power to issue opinions or decisions as to whether any particular country is in conformity with or violation of the Covenant. The Ecosoc Committee currently meets for only one three-week session annually, which is clearly insufficient for it to fulfill its mandate.

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4 For a description of the disappointing history of implementation of the Covenant on Economic, Social and Cultural Rights, see Philip Alston, "Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights," 9 Human Rights Quarterly 332 (Aug. 1987).

Complaint procedures

There are two procedures under which specific allegations of human rights violations may be filed with the Human Rights Committee; no corresponding provisions exist in the Covenant on Economic, Social and Cultural Rights. President Carter's message of transmittal to the Senate indicated that the United States would make a declaration, under article 41 of the Covenant on Civil and Political Rights, to permit the Human Rights Committee to hear complaints filed by another country against the U.S. (on the basis of reciprocity). While no such inter-state complaint has yet to be filed under the Covenant, the Human Rights Committee's ultimate authority would extend only to preparation of a confidential report on the dispute, which it submits to the concerned parties; with the prior consent of the parties, it also may establish an ad hoc "Conciliation Commission" to assist in reaching an "amicable solution".

The second complaint procedure is contained in an Optional Protocol to the Covenant, which enables individuals to bring complaints against their own governments for alleged violations of human rights. However, the Committee only has authority to submit "its views" on a complaint (denominated a "communication") to the country and individual concerned; a summary of the Committee's activities under the Optional Protocol, including many of the opinions it has rendered, forms part of its annual reports. While the Committee's decisions even under the Optional Protocol are not legally "binding," they do carry moral and

political weight. Thirty-eight states, from the Third World and the West, have thus far become parties to the Optional Protocol. The Commission on Security and Cooperation in Europe recommended in 1979 that the U.S. also become a party to the Optional Protocol, but it was not submitted to the Senate by President Carter or subsequently.

Thus, the only procedural obligation imposed by the Covenants is that of periodic reporting to the respective oversight committees. Complaint mechanisms exist only with respect to the Covenant on Civil and Political Rights, and they are optional. The most important opportunity for influencing the development of the oversight mechanisms of the Covenants -- participation in meetings of the State Parties and possible election of an American expert to serve on the Human Rights and Ecosoc Committees -- is unavailable to the United States as a non-party.

Political Considerations

However, the reasons that the United States has not yet ratified the two Covenants are neither substantive nor procedural. They are wholly political and stem from the rejection by the present administration -- and, it would appear, by Congress -- of the fundamental tenet which underlies the international protection of human rights: that individual human rights are a legitimate international concern which transcends national frontiers and requires international as well as domestic action to ensure their implementation.

During the past decade, and particularly since 1981, the United States has consistently rejected multilateral, as opposed to bilateral, efforts to secure universally accepted human rights norms. Indeed, the United States has come perilously close to rejecting the very idea of international law, binding upon states whether or not they agree with particular interpretations of that law by competent international bodies.

U.S. withdrawal from the compulsory jurisdiction of the International Court of Justice is but the most striking example of an unwillingness to submit either our ideas or our actions to international scrutiny. The unilateral refusal to pay our assessed dues to the United Nations and other international bodies, the illegal closing of the Observer Mission of the Palestine Liberation Organization to the United Nations (an action condemned by <u>every</u> UN member, including U.S. allies), and the failure to ratify <u>any</u> multilateral human rights treaty in the past 20 years reflect a neo-isolationism that arrogantly considers U.S. interests -- as defined by the U.S. -- to be beyond the reach of the international community.

The first Reagan nominee for the position of Assistant Secretary of State for Human Rights was Ernest Lefever, a man who did not believe that it was legitimate to inquire into the domestic human rights practices of other countries or that human rights had any role to play in the formulation of U.S. foreign policy. Following his rejection by the Senate Foreign Relations Committee, human rights concerns <u>have</u> played some role in foreign

policy, although almost exclusively on a bilateral basis or as part of a policy of public confrontation of communist adversaries. Under the guise of reestablishing "balance" in UN human rights debates or distinguishing between so-called "totalitarian" and "authoritarian" dictatorships, the U.S. frequently has seemed more interested in weakening existing international procedures than in making them more effective.[5]

Of 22 major international human rights treaties for which statistics are regularly compiled by the United Nations, the U.S. is a party to only six: four conventions concerned with slavery (the first of which entered into force in 1929), the 1967 Protocol relating to Refugees, and a 1953 convention which prohibits discrimination against women in voting and holding public office -- and it took over two decades to ratify the last-mentioned. The current administration is to be congratulated on acquiring Senate consent to the Genocide Convention, although, since the required implementing legislation has not yet been adopted, the United States has yet to join the other 97 parties to that treaty.

At least the preceding administration submitted five major human rights treaties to the Senate for its advice and consent;[6]

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5 For example, the U.S. was the only country to vote against creation of the Ecosoc Committee, despite the fact that there was a consensus among non-communist states that reform of the oversight procedures was essential.

6 In addition to the four treaties (including the two Covenants) referred to above, President Carter transmitted the Convention on the Elimination of All Forms of Discrimination Against Women to the Senate in 1980.

not a single significant human rights treaty has been signed by the current administration, nor has any effort whatsoever been made to secure approval by the Senate of any of the human rights treaties currently pending before it.

Refusal to ratify international treaties has not meant that the U.S. has failed to participate in UN and other political forums, where human rights violations could be used to criticize adversaries. Indeed, the U.S. has supported initiatives at the UN Commission on Human Rights to focus greater attention on important issues such as the right to leave and return, torture, and religious intolerance. However, these actions have stopped short of support for binding norms or ratification of international treaties.

Although not the subject of the present hearings, U.S. policies with respect to development of an international convention against torture are illustrative. Such a convention, the result of an initiative which began with adoption by the UN General Assembly of a declaration against torture in 1975, was finally adopted by the General Assembly in 1984. The U.S. delegation was very active in the drafting process and played a positive role in the convention's ultimate acceptance.

The Torture Convention entered into force in 1987, when the twentieth state ratified it. Not only has the U.S. failed to ratify the convention, but the President has not even signed the convention in the more than three years since its adoption -- with U.S. support -- by the General Assembly. No explanation

for this delay has been forthcoming from the State or Justice Departments.

A similar pattern seems to be emerging with respect to a draft convention on the rights of the child, which was recently adopted by a working group of the UN Commission on Human Rights. Again, the U.S. has been active in the drafting process, but one can only speculate as to the credibility that such participation retains in light of the consistent refusal of the U.S. to ratify such conventions.

Returning to the Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights, it has been clear for years that the current administration has no intention of supporting ratification of either treaty.

There is a consensus within the administration that economic, social, and cultural "rights" do not exist at all, but are merely "conditions" to be addressed as a matter of moral, but not legal, concern.[7] In the Country Reports on Human Rights Practices for 1986, the pretence of concern over economic, social and cultural rights was abandoned altogether, as even the section on the "economic, social and cultural situation" in a country was deleted; only "conditions of labor" now are addressed. The instructions from the State Department to U.S. embassies on this issue are worth citing in some detail:

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7 See, e.g., Country Reports on Human Rights Practices for 1981 (Dept. of State, 1982) at 6; 1982 was the first year in which the Reagan administration was wholly responsible for preparation of these Congressionally-mandated reports.

> Final section of previous years' reports, entitled quote economic, social and cultural situation unquote contained substantial amount of descriptive information and statistical data on socio-economic conditions which was not repeat not directly relevant to a report on "the status of internationally recognized human rights" as required by pertinent legislation.... Inclusion of this data tended to blur the distinction which it has long been U.S. policy to maintain between fundamental political and civil rights on the one hand and so called "economic and social rights" on the other.
>
> The USG has consistently taken the view that economic and social "rights" are aspirations rather than present obligations and as such are not included in our understanding of the meaning of the term "internationally recognized human rights". Therefore, the section entitled "economic, social and cultural situation" has been eliminated.[8]

The Introduction to the Country Reports for 1987 does note that there is "a profound connection between human rights and economic development," but dismisses the "concept" of economic, social, and cultural rights as "often confused."[9]

At least the Reagan administration has been relatively straightforward regarding its rejection of economic, social, and cultural rights. No such honesty has been forthcoming with respect to the other four treaties pending in the Senate. The official position has been that at least the Covenant on Civil and Political Rights was "under review," although no one in

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8 Cable from the Secretary of State to all diplomatic and consular posts, Nov. 1986, State 282859; quoted in Status of U.S. Human Rights Policy, 1987, Hearing before the House Subcommittee on Human Rights and International Organizations, 19 Feb. 1987, at 38-39.

9 Country Reports on Human Rights Practices for 1987 (Dept. of State, 1988) at 3. Cf. Secretary Schifter's speech in Venice on 4 Feb. 1988 on "The Semantics of Human Rights" (Dept. of State Bureau of Public Affairs, Current Policy No. 1901).

either the Departments of State or Justice can be identified as responsible for this mythical review.

My comments thus far concerning the political reasons for non-ratification of the Covenants have referred primarily to the Reagan era, but it would be incorrect and misleading to place the blame only on a particular administration. However, there is no doubt that the Reagan administration cares less about international law than any administration in recent memory, and it views "human rights" as an ideological weapon rather than an international rule of behavior which can bind the United States, just as rules regarding freedom of the seas or the responsibility of states for injuries to aliens are binding. The administration is unfortunately joined in this view by many members of Congress.

Provisions in the Foreign Assistance Act [116(a) and 502B(a)(2)] which prohibit U.S. aid to any country "which engages in a consistent pattern of gross violations of internationally recognized human rights" have been ignored,[10] although country-specific legislation has been adopted on Congressional initiatives to condition or limit aid in several situations. The most recent State Department Country Reports no longer include figures for U.S. assistance to individual countries, thus

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10 See, e.g., testimony by the Assistant Secretary of State for Human Rights to the Subcommittee on Human Rights and International Organizations, 19 Feb. 1987, at 72, in which he confirms that neither the Carter nor Reagan administration has ever formally determined that a country is engaging in a practice of gross violations of human rights within the meaning of 502B.

underscoring the "delinkage" of human rights and security or economic assistance.

As already noted, the United States is unable to participate in any treaty-based human rights monitoring body, and it is often perceived as utilizing political forums (such as the UN Commission on Human Rights and the Helsinki review process) to attack adversaries on human rights grounds while ignoring allies. Without entering into the tactical debate over "quiet diplomacy" versus more public acts, such perceptions seem to be largely accurate. For example, the primary country-specific initiative of the United States during the past two sessions of the UN Commission on Human Rights has been to attack the human rights situation in Cuba, while it has sought to downgrade UN investigations of the situations in El Salvador and Guatemala. These policies may be individually defensible, but they hardly promote an image of even-handedness and universality with respect to human rights.[11] The administration apparently believes that the UN Commission on Human Rights is of little real value in promoting human rights, yet it has taken no steps to increase U.S. participation in other multilateral forums or to attempt structural reform within the UN system.[12]

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11 At the same time, one should recognize that the U.S. eventually adopted a more positive human rights policy in some bilateral contexts, as in the cases of Haiti, the Philippines, and South Korea, and that the Country Reports themselves have improved in quality and objectivity in the past several years.

12 See Status of U.S. Human Rights Policy, 1987, supra note 00 at 160.

Despite the mandate of the Commission on Security and Cooperation in Europe to monitor the acts of all signatories to the Helsinki Final Act, its activities have in practice been limited to criticizing the human rights performance of the Soviet Union and Eastern Europe. This policy again reinforces the perception that human rights is merely a tool in the American ideological arsenal, not to be used against allies or even neutrals (such as Yugoslavia), where that suits U.S. propaganda interests.

Promotion of international legal standards to protect human rights is not an important issue to Congressional constituents. While individual situations of gross violations may be of great concern to segments of the American public, particularly those with ethnic or religious ties to the victims, few care whether or not the United States ratifies a particular treaty or attempts to reform international mechanisms. It is easier for politicians to support jingoistic slogans and proclaim that American is a "city on the hill" to be emulated by all than to suggest that the United States might itself be limited by international law -- despite the fact that the United States has historically been a leader in promoting the rule of law internationally.

The Need for New Leadership

In light of the widespread rejection of multilateralism by the State Department and Congress and the general apathy of the American public towards international law, the fact that the

Covenants remain unratified and little mourned is hardly surprising.

The failure of the United States to ratify either of the two international Covenants (not to mention other fundamental international human rights treaties) does not reflect any particular antipathy to those two treaties. It follows in an unhappy tradition of Senator Bricker and others who sought to protect racial segregation and other American blemishes from international scrutiny in the 1940s. It is consistent with today's fashionable denigration of the United Nations, International Court of Justice, Organization of American States, and other multilateral forums, unless those bodies reflect the world in America's image. It is consistent with the U.S. invasion of Grenada and attempts to overthrow the governments of Nicaragua and Panama, which themselves reflect the same solitary arrogance as that exhibited by the Soviet Union in Afghanistan and Vietnam in Cambodia.

Until such arrogance decreases, until the United States is willing not only to serve as a human rights model (as it should) but also to admit that the model can be improved by occasionally listening to the rest of the world, the Covenants will remain minor casualties on an ideological battlefield where we have abandoned moral legitimacy in favor of military license.

No one believes that U.S. ratification of the Covenants will immediately improve the human rights situation in the world, any more than adoption of the Fourteenth Amendment to the U.S.

Constitution guaranteed equality to all citizens in 1868. But it is the international acceptance of these norms that legitimizes them and justifies U.S. interest in their enforcement, just as the proclamation of equality in 1868 supported legal and moral claims nearly a century later. The continued refusal of the United States to ratify formally such international standards undermines its self-proclaimed morality and commitment to law rather than force.

Change in U.S. policy with respect to the Covenants will come about only with a change in U.S. attitudes toward international law and the U.S. role in the international community. The concept and ideals of human rights continue to be widely supported by the American public, but it will require leadership in Congress and the new administration which will assume office in 1989 to push the United States towards regaining its proper role as a supporter of the rule of law in the international arena. Such leadership is sadly lacking at present, as toadying to special interest groups or supporting short-term international adventures is much more prevalent than leading national opinion or understanding that the long-term interests of the United States lie in encouraging an international order where human rights and the rule of law need not always depend on naked power for their defense.

Hurst Hannum has served as Executive Director of the Procedural Aspects of International Law Institute since 1980. He is a member of the California and District of Columbia bar associations and is author or editor of several books and numerous articles in the field of international law and human rights, including Guide to International Human Rights Practice, which was awarded the 1985 Certificate of Merit by the American Society of International Law as "a work of great distinction," and The Right to Leave and Return in International Law and Practice. His most recent work, Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights will be published in 1989. Mr. Hannum has been an Adjunct Professor at the American University College of Law and University of Virginia School of Law.

The Procedural Aspects of International Law (PAIL) Institute is an independent, non-profit organization incorporated in 1966 to stimulate and coordinate research on the mechanisms by which international law is and can be made applicable to the conduct of states and individuals. Since 1981, it has been a nongovernmental organization in consultative status with the United Nations (ECOSOC). The PAIL Institute's primary areas of research have been the protection of individual human rights; the international enforcement of private property and economic rights; and issues related to fact-finding and dispute settlement by international bodies.

APPENDIX G

Statement of

Amnesty International USA

in support of

U.S. Ratification of the

International Covenant on Civil and Political Rights
and the
International Covenant on Economic, Social and Cultural Rights

Submitted for the record to the

Commission on Security and Cooperation in Europe

March 29, 1988

Amnesty International USA commends the Commission on Security and Cooperation in Europe for holding these important hearings on U.S. ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. We consider U.S. ratification of these international human rights agreements as critical and are grateful to the Commission for the opportunity to state once again our support for and urge prompt action on U.S. ratification.

As an organization fighting for recognition and respect for fundamental human rights, focusing on freeing prisoners of conscience, obtaining fair trials for all political prisoners, and working to end torture and executions, we are aware of the importance of international agreements in the field of human rights. These treaties establish the accepted framework of international standards to which governments can then be held accountable.

Amnesty International recognizes adherence to international agreements as central to the human rights struggle, unifying the world community through accepted norms and creating a legitimate basis for the efforts of human rights activists within individual countries. For this reason, and to mark the 40th anniversary of the Universal Declaration of Human Rights from which these treaties are derived, Amnesty International has just launched "Human Rights Now!," a worldwide campaign to support the rights set forth in the

Universal Declaration of Human Rights and to appeal on behalf of human rights activists.

As part of that campaign, Amnesty International calls upon all governments to ratify the world's human rights treaties, to bring their own laws and practices into line with them and to act to protect human rights worldwide. We are aware, as are members of this Commission, that men and women in every region of the world are now risking arrest, torture, and death to protect the basic human rights guaranteed in international law. These people stand at the front line of the human rights struggle, embracing the responsibility to protect the rights of others and working to hold government authorities accountable for their actions.

Certainly, the United States should take this step of ratification to support the work of these courageous human rights workers. Such an action will strengthen the basis of the human rights factor in U.S. foreign policy, and ultimately better serve U.S. national interests as well. Elected officials must develop a foreign policy that serves this country's national interests by giving priority to universal human rights concerns. U.S. support for the rights of citizens living under a repressive government, whatever that government's ideology, gains the friendship of that country's people. A people's perception that the U.S. Government supports their oppression engenders their long-term enmity.

In a world where the gap is vast between rhetoric on human rights and the reality of repression, one can legitimately ask what good it does to define rights, when documents have no power in themselves to protect people or punish perpetrators of human rights abuses. The response is simply that we must begin to build a consensus that governments, and officials within those governments, will be held accountable for what they do to their citizens. That pressure for accountability right now must come from governments, as well as human rights activists, who are committed to respect for human rights.

We urge the United States Government to join the almost 90 nations, including the vast majority of Helsinki Accord signatories, who are parties to these international covenants and work aggressively to close the gap between human rights rhetoric and the reality of human rights abuses.

APPENDIX H

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April 13, 1988

The Honorable Steny H. Hoyer, Chairman
Commission on Security and Cooperation
in Europe
237 House Office Building Annex 2
Washington, DC 20515

Dear Mr. Chairman.

In response to your recent inquiry, I am pleased to inform you that the American Bar Association has, since 1979, consistently supported United States ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, subject to certain reservations, understandings and declarations. The ABA's policy-setting House of Delegates adopted a resolution by voice vote in February 1979 which articulates this policy and the proposed conditional language. A copy of that resolution and the accompanying background report is enclosed.

The American Bar Association is committed to the rule of law worldwide. Within that context, we believe that human rights are advanced most effectively not through mere political discussion, but by the ratification and enforcement of well-crafted international legal instruments. As stated in ABA testimony before the Senate Foreign Relations Committee in November 1979 hearings on this subject, the United States "has played a leadership role in the drafting and promoting of numerous human rights agreements ... Without binding ourselves by the same legal obligations we lose credibility with our friends and we lose standing to accuse the wrongdoers."

I commend you and the other members of the Commission on Security and Cooperation in Europe for addressing this important issue. United States accession to

these two covenants will be an important step forward in this country's commitment to human rights, and in our political and legal ability to advance that cause around the world.

Warm regards.

Sincerely,

Joseph Griffin
Chairman

JG:br

3099M

AMERICAN BAR ASSOCIATION

REPORT
TO THE HOUSE OF DELEGATES

SECTION OF INTERNATIONAL LAW

RECOMMENDATION

The American Bar Association Section of International Law approves and recommends the following resolution for adoption by the House of Delegates of the American Bar Association:

BE IT RESOLVED that the American Bar Association favors the ratification by the United States of the International Covenant on Economic, Social and Cultural Rights and urges the Senate to give its advice and consent to the ratification of the Covenant subject to the following statements, declarations and reservation recommended to the Senate by the Departments of State and Justice:

(a) The United States understands paragraph (1) of Article 2 as establishing that the provisions of Articles 1 through 15 of this Covenant describe goals to be achieved progressively rather than through immediate implementation.

(b) The United States declares that nothing in the Covenant derogates from the equal obligation of all States to fulfill their responsibilities under international law. The United States understands that under the Covenant everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of

his property.

(c) The Constitution of the United States and Article 19 of the International Covenant on Civil and Political Rights contain provisions for the protection of individual rights, including the right to free speech, and nothing in this Covenant shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States.

(d) The United States shall progressively implement all the provisions of the Covenant over whose subject matter the Federal Government exercises legislative and judicial jurisdiction; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant.

(e) The United States declares that the provisions of Articles 1 through 15 of the Covenant are not self-executing.

REPORT

The International Covenant on Economic, Social and Cultural Rights sets forth a number of rights which conform largely to United States law and practice. Statements, declarations, and a reservation were recommended in early 1978 by the Departments of State and Justice as to provisions in the Covenant which depart from said law and practice. This Recommendation parallels exactly the position of the State and Justice Departments. The Covenant is drawn largely from the 1948 U.N. Universal Declaration of Human Rights, in whose conception, formulation and adoption the United States played a central role.

The Covenant was adopted by the U. N. General Assembly on December 16, 1966, and came into force on January 3, 1976. The following fifty-five (55) nations have ratified or acceded to the Covenant: Austria, Australia, Barbados, Belgium, Bulgaria, Byelorussian SSR, Canada, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Domincan Republic, Ecuador, Finland, German Dem. Rep., Germany-Fed. Rep., Guinea, Guyana, Hungary, Italy, Iran, Iraq, Jamaica, Jordan, Kenya, Lebanon, Libya, Madagascar, Mali, Mauritius, Mongolia, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Senegal, Spain, Surinam, Sweden, Syrian Arab. Rep., Rwanda, Tanzania, Tunisia, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Yugoslavia, and Zaire.

On October 5, 1977, President Carter signed the Covenant on behalf of the United States, and on February 23, 1978, he sent the Covenant to the United States Senate for its advice and consent to ratification (United States Constitution, Article II, Section 2) with the statements, declarations and reservation set forth in this Recommendation - which are designed to ensure that the Covenant, as ratified, will be consistent with the Constitution, laws and practice of the United States. The text of the Covenant is attached as Exhibit A.

PURPOSE AND PROVISIONS OF THE COVENANT

Articles 1 through 15 contain the substantive provisions. Article 1 is the general Article discussing the rights of all peoples to self-determination and to freely dispose of their natural wealth and resources based on principles of international law. This Article is entirely consistent with United States constitutional and legal policy.

Paragraph (1) of Article 2 sets forth the basic obligations of States to take steps, both individually and through international cooperation, "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized by the Covenant by all appropriate means including legislative measures." In view of this provision and the substantial rights set forth in the Covenant, the United States Department of State has proposed the following ratification statement:

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> "The United States understands Paragraph (1) of Article 2 as establishing that the provisions of Articles 1 through 15 of the Covenant describe goals to be achieved progressively rather than through immediate implementation."

It is also understood that Paragraph (1) of Article 2 as well as Article 11, which calls for State Parties to take steps individually and through international cooperation to guard against hunger, import no legally binding obligation to provide aid to foreign countries. The Council of the Section has approved this understanding.

Paragraph (2) of Article 2 forbids discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Departments of State and Justice have concluded that this provision would not alter existing United States and international law which permits certain classifications of non-nationals in appropriate cases. Thus, this Paragraph would not preclude reasonable distinctions based on citizenship. These conclusions and understanding have been approved by the Council of the Section.

Paragraph (3) of Article 2 provides that developing countries may determine to what extent they will guarantee the economic rights recognized in the Covenant to non-nationals. Additionally, Article 25 provides that nothing in the Covenant is to be interpreted as impairing the "inherent right of all people to enjoy and utilize fully and freely their natural wealth and resources." The State Department has properly proposed a declaration which would recognize the international law principle that any taking of private property must be nondiscriminatory, have a public purpose, and be accompanied by prompt, adequate and effective compensation. The language of the declaration is as follows:

> "The United States declares that nothing in the Covenant derogates from the equal obligation of all States to fulfill their responsibilities under international law. The United States understands that under the Covenant everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property."

Article 3 discusses the equal rights of men and women with respect to the rights set forth in the Covenant, and Article 4 permits derogation from Covenant rights only by laws made for the general welfare.

Article 5 provides that nothing in the Covenant can be interpreted as granting the right to engage in activity or to perform an act aimed at the

destruction of any of the rights recognized in the Covenant or otherwise to limit them further than they are limited by the Covenant. This provision technically could raise problems in connection with the freedom of speech provisions of the Constitution, and, accordingly, the State Department has recommended the following statement:

> "The Constitution of the United State and Article 19 of the International Covenant on Civil and Political Rights contain provisions for the protection of individual rights, including the right to free speech, and nothing in this Covenant shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

Articles 6 through 9 of the Covenant list certain economic rights including the right to work, to favorable working conditions, to organize unions and to social security. The understanding proposed by the State Department with respect to Paragraph (1) of Article 2 would make it clear that these provisions are understood to be goals whose realization will be progressively sought rather than obligations requiring immediate implementation.

Articles 10 through 14 set forth certain social rights including the right to protection of the family, standards for maternity leave. the right of freedom from hunger, the right to physical and mental health, and the right to an education. These rights are all consistent with United States law. Article 15 provides for certain cultural (science, literature and art) rights, all of which are protected by current United States law and policy.

Articles 16 through 23 contain administrative provisions requiring reports on implementation of the Covenant to be submitted to the United Nations Secretary General for transmission to and consideration by the U.N. Economic and Social Council.

Article 25 preserves the right of "all peoples to enjoy and utilize fully and freely their natural wealth and resources" which is subject to the declaration, supra.

Articles 26 through 31 contain the procedural provisions, Article 28 states that "the provisions of the present Covenant shall extend to all parts of Federal states without any limitations or exceptions." In view of the nature of the federal system in the United States the following Federal-State reservation has been proposed and is required for the Covenant:

"The United States shall progressively implement all the provisions of the Covenant over whose subject matter the Federal Government exercises legislative and judicial jurisdiction; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of the Covenant."

Finally, the Recommendation concurs with the decision of the State Department that it would be advisable to include a declaration that the substantive provisions (Articles 1 through 15 of the Covenant) are not self-executing:

"The United States declares that the provisions of Articles 1 through 15 of the Covenant are not self-executing."

CONCLUSION

Pursuant to the United Nations Charter, the United States has pledged to promote the international observance of human rights and fundamental freedoms. The International Covenant on Economic, Social and Cultural Rights is a means of putting this pledge into effect.

This Recommendation favors ratification of the Covenant subject to the statements, declarations and reservations proposed by the Department of State whose letter of submittal to the President dated December 17, 1977, states that the Department of Justice is of the view that with them "there are no constitutional or other legal objections to United States ratification . . . ."

The Covenant is widely accepted throughout the world, as evidenced by the fact that 55 nations have become party thereto. Failure to ratify would damage the international credibility of the United States in the area of human rights. The American Bar Association should, accordingly, adopt the resolution recommended by this Report.

Respectfully submitted,

Don Wallace, Jr., Chairman,
Section of International Law

February, 1979

AMERICAN BAR ASSOCIATION

REPORT
TO THE HOUSE OF DELEGATES

SECTION OF INTERNATIONAL LAW

RECOMMENDATION

The American Bar Association Section of International Law approves and recommends the following resolution for adoption by the House of Delegates of the American Bar Association:

BE IT RESOLVED that the American Bar Association favors the ratification by the United States of the International Covenant on Civil and Political Rights and urges the Senate to give its advice and consent to ratification of the Covenant subject to the following reservations, declaration, statement and understanding recommended to the Senate by the Departments of State and Justice (and an understanding on "right to life"):

(a) The Constitution of the United States and Article 19 of this Covenant contain provisions for the protection of individual rights, including the right of free speech, and nothing in this Covenant shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States.

(b) The United States' adherence to Article 6 [concerning the 'right to life'] is subject to the Constitution and other laws of the United States.

(c) The United States reserves the right to impose capital punishment on any person duly convicted under existing or future laws permitting the imposition of capital punishment.

(d) The United States does not adhere to Paragraph (5) of Article 9 or to the third clause of Paragraph (1) of Article 15 [compensation for unlawful arrest, and retroactive lighter criminal penalties].

(e) The United States considers the [prisoner segregation and rehabilitation standards] rights enumerated in Paragraphs (2) and (3) of Article 10 as goals to be achieved progressively rather than through immediate implementation.

(f) The United States understands that subparagraphs (3)(b) and (d) of Article 14 do not require the provisions of court-appointed counsel when the defendant is financially able to retain counsel or for petty offenses for which imprisonment will not be imposed. The United States further understands that Paragraph (3)(e) does not forbid requiring an indigent defendant to make a showing that the witness is necessary for his attendance to be compelled by the court. The United States considers that provisions of United States law currently in force constitute compliance with Paragraph (6). The United States understands that the prohibition on double jeopardy contained in Paragraph (7) is applicable only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the Federal Government or a constituent unit, which is seeking a new trial for the same cause.

(g) The United States declares that the [natural resources utilization] right referred to in Article 47 may be exercised only in accordance with international law.

(h) The United States shall implement all the provisions of the Covenant over whose subject matter the Federal Government exercises legislative and judicial jurisdiction; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant.

(i) The United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing.

REPORT

The International Covenant on Civil and Political Rights is close in concept to the United States Constitution and Bill of Rights. Reservations, declarations, a statement and an undertanding were recommended in early 1978 by the Departments of State and Justice as to provisions in the Covenant which depart from United States law and practice. This recommendation proposes one understanding dealing with the "right to life" which is in addition to the understanding proposed by the Departments of State and Justice. It is believed that this understanding will not weaken the State Department position, or the treaty's merits, in Senate deliberation.

The rights guaranteed by the Covenant are those civil and political rights with which the United States and the Western democracies have always been associated. The rights are primarily limitations upon the power of the State to impose its will upon the people under its jurisdiction. This Covenant is drawn largely from the U.N.'s 1948 Univerral Declaration of Human Rights, in whose conception, formulation and adoption the United States played a major role.

On October 5, 1977, President Carter signed the Covenant on Civil and Political Rights on behalf of the United States and on February 23, 1978, he transmitted this Covenant to the United States Senate for its advice and consent to ratification (U.S. Constitution, Article II, Section 2) with the reservations, declarations, statement and undertstanding set forth in this Recommendation. The text of the Covenant is attached as Exhibit A.

The Covenant was adopted by the U.N. General Assembly on December 16, 1966, and came into force on March 23, 1976. The following fifty-one (51) nations have ratified or acceded to the Covenant: Austria, Barbados, Bulgaria, Byelorussian SSR, Canada, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, German Dem. Rep., Germany-Fed. Rep., Guinea, Guyana, Hungary, Italy, Iran, Iraq, Jamaica, Jordan, Kenya, Lebanon, Libya, Madagascar, Mali, Mauritius, Mongolia, Norway, Panama, Poland, Portugal, Romania, Rwanda, Senegal, Spain, Sweden, Surinam, Syrian Arab Rep., Tanzania, Tunisia, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Yugoslavia and Zaire.

PURPOSE AND PROVISIONS OF THE COVENANT

Articles 1 through 27 contain the substantive provisions.

Article 1 contains provisions regarding self-determination and the right to dispose of natural wealth and resources subject to the principles of mutual benefit and international law.

Article 2 commits parties to provide the rights enumerated in the Covenant without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 obligates parties to undertake to ensure equal rights of men and women to all civil and political rights set forth in the Covenant.

Article 4 permits derogation of certain of the Covenant rights in certain situations of public emergency providing that the rights are not abridged in a discriminatory manner.

Article 5 provides that nothing in the Covenant may be interpreted "as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein . . . ." Furthermore, Article 20 prohibits "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence . . . ." These provisions would raise problems in connection with the free speech provisions of the Constitution. Thus, the following reservation is required:

> "The Constitution of the United States and Article 19 of this Covenant contain provisions for the protection of individual rights, including the right of free speech, and nothing in this Covenant shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

Article 6 of the Covenant provides a general protection of the right to life and limits the circumstances in which capital punishment may be imposed or carried out. Under Article 6(1) "every human being has the inherent right to life." Also under Article 16 "everyone" is recognized as a person before the law. The language is clearly less controversial than the language in the American Convention on Human Rights which protects human beings "in general, from the moment of conception." In addition there is no authority in the treaty-making power to contravene the U.S. Constitution. However, in order to avoid any confusion regarding the meaning of these terms, the following special understanding [beyond the recommendations of the Departments of State and Justice] is recommended:

> "The United States' adherence to Article 6 [concerning the 'right to life'] is subject to the Constitution and other laws of the United States."

Paragraph 2 of Article 6 states that the death sentence may be imposed only for "the most serious crimes in accordance with the laws in force at the time of the commission of the crime."

Paragraph 5 prohibits any signatory nation from executing pregnant women and prohibits a death penalty "for crimes committed by persons below 18 years of age." Since United States law is not entirely in accord with these provisions, the following reservation is recommended:

> "The United States reserves the right to impose capital punishment on any person duly convicted under existing or future laws permitting the imposition of capital punishment."

Article 7 provides that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment and that no one shall be subjected without their consent to medical or scientific experimentation. Article 8 forbids slavery.

Article 9 provides that everyone has the right to liberty and security of person and "no one shall be subjected to arbitrary arrest or detention."

Paragraph 5 of Article 9 provides "that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation." A related provision is Paragraph (1) of Article 15 which, inter alia, would make imposition of lesser criminal penalties retroactive. Since these are rights which are not required under United States law, the following reservation is recommended:

> "The United States does not adhere to Paragraph (5) of Article 9 or to the third clause of Paragraph (1) of Article 15."

Article 10 deals with treatment of prisoners and provides that the essential aim of prisons shall be the "reformation and social rehabilitation" of prisoners. However, some of the specific requirements go slightly beyond what is afforded in U. S. prisons and thus the following statement is recommended:

> "The United States considers the rights enumerated in Paragraphs (2) and (3) of Article 10 as goals to be achieved progressively rather than through immediate implementation."

Article 11 forbids imprisonment" merely on the ground of inability to fulfill a contractual obligation." Article 12 guarantees one "the right to liberty of movement and freedom to choose his residence." Article 13 deals with the lawful means of expulsion from the territory of a State party.

Article 14 establishes standards for the conduct of trials including presumption of innocence, right to counsel, to speedy trial, to be informed of charges, to subpoena and to examine witnesses. It is possible to read the requirements in Article 14 as consistent with United States law, policy and practice. The Senate may wish, however, to record an understanding as follows:

> "The United States understands that subparagraphs (3) (b) and (d) of Article 14 do not require the provision of court-appointed counsel when the defendant is financially able to retain counsel or for petty offenses for which imprisonment will not be imposed. The United States further understands that paragraph (3)(e) does not forbid requiring an indigent defendant to make a showing that the witness is necessary for his attendance to be compelled by the court. The United States considers that provisions of United States law currently in force constitute compliance with paragraph (6). The United States understands that the prohibition on double jeopardy contained in paragraph (7) is applicable only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the Federal Government or a constituent unit, which is seeking a new trial for the same cause."

Article 15 concerns retroactive criminal offense penalties and is dealt with in the reservation, supra. (Middle of page 6.)

Article 16 deals with the right to be recognized as a person. Article 17 prohibits "arbitrary or unlawful interference" with individual privacy. Article 18 sets forth the right to freedom of religion.

Other important rights which are provided for in the Covenant include the right of peaceful assembly (Article 21), freedom of association (Article 22) and protection of the family and of children (Articles 23 and 24). Article 25 discusses voting rights and provides, in paragraph (b), that every citizen shall have the right and opportunity "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." Article 26 provides for non-discriminatory equal protection of laws, and Article 27 protects cultural, religious, and language practices. These rights are entirely consistent with U. S. law.

Articles 28 through 47 of the Covenant set forth the administrative and enforcement provisions. Article 28 establishes a Human Rights

Committee. Under Article 40 the State Parties "undertake to submit reports on the measures they have adopted which give effect to the rights recognized" in the Treaty. All such reports will be submitted to the United Nations Secretary-General who shall transmit them to the Committee for consideration. Only those states that declare under Article 41 that they recognize the competence of the Committee may claim that another declarant state party is not fulfilling its obligations under the Covenant. If the Committee is unable to resolve a claim properly submitted to it, it can appoint an ad hoc conciliation commission (under Article 42)to lend its good offices with a view to reaching an amicable solution of the matter, but only with the prior consent of the state parties concerned. It is anticipated that the United States will make a declaration recognizing the competence of the Committee since it is in the interest of the United States to facilitate and influence the State to State complaint procedure which will help establish a generally accepted law of international human rights. Any such declaration may be withdrawn at any time by notification to the Secretary-General.

Article 47 provides that nothing in the Covenant is to be interpreted as impairing "the inherent right of all peoples to utilize fully and freely their natural wealth and resources." In order to ensure that the international law principle of prompt, adequate and effective compensation is recognized, the following declaration is required:

> "The United States declares that the right referred to in Article 47 may be exercised only in accordance with international law."

Article 50 states that "the provisions of the present Covenant shall extend to all parts of federal States without any limitation or exceptions." In view of the nature of the federal system in the United States the following reservation is required for this Covenant:

> "The United States shall progressively implement all the provisions of the Covenant over whose subject matter the Federal Government exercises legislative and judicial jurisdiction; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant."

Finally, it is believed advisable to include a treaty declaration that the substantive provisions (Articles 1 through 27 of the Covenant) are not self-executing, leaving any further implementation that may be desired to

the domestic legislative and judicial process:

"The United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing."

CONCLUSION

Pursuant to the United Nations Charter, the United States has pledged to promote the observance of human rights and fundamental freedoms. The International Covenant on Civil and Political Rights is a means of putting this pledge into effect.

This Recommendation favors ratification of the Covenant subject to the reservations, declarations, statement and understanding proposed by the Department of State whose letter of submittal to the President dated December 17, 1977, states that the Department of Justice is of the view that with them "there are no constitutional or other legal objections to United States ratification . . . . " The Recommendation also proposes the additional understanding dealing with the "right to life" as noted above.

The Covenant is widely accepted throughout the world, as evidenced by the fact that 51 nations have become party thereto. Failure to ratify would damage the international credibility of the United States in the area of human rights. The American Bar Association should, accordingly, adopt the resolution recommended by this Report.

Respectfully submitted,

Don Wallace, Jr., Chairman,
Section of International Law

February, 1979

APPENDIX I

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — Washington, D.C. 20530

23 March 1988

Honorable Steny H. Hoyer
Chairman
Commission on Security and Cooperation
in Europe
237 HOB Annex 2
Washington, D.C. 20515

Dear Mr. Chairman:

This will confirm our verbal declination, on behalf of the Attorney General, to testify before the Commission on Tuesday, March 29, 1988 concerning "The International Covenants on Human Rights."

We received your inviation on March 9, 1988. On March 14, 1988, this office informed Ericka Schlager of your staff by telephone that the Department of Justice would not be appearing as it would be deferring on this matter to the testimony to be presented by the Department of State. As you know, the Covenants have been pending with the Senate Committee on Foreign Relations since 1979. While the Department of Justice testified before that Committee at the time the Covenants were submitted to the Senate for ratification, we have consistently deferred to the Department of State since that time with regard to the need for further action.

It is for this reason that the Department declines to testify before the Commission next Tuesday. However, we would be pleased to respond to any questions raised at the hearing which the State Department believes appropriate for Justice Department response, or to which members of the Commission would like an answer in writing.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

cc. Honorable Dennis DeConcini
Co-Chairman

APPENDIX J

Reports due *

The situation with regard to the submission of reports by States parties under article 40 of the Covenant is as follows:

States parties whose reports were due by the closing date of the thirty-first session (13 November 1987) but have not yet been received

Initial reports

State party	Date due	Number of reminders sent
Saint Vincent and the Grenadines	8 February 1983	8
Bolivia	11 November 1983	6
Viet Nam	23 December 1983	7
Gabon	20 April 1984	7
Togo	23 August 1985	5
Cameroon	26 September 1985	5
San Marino	17 January 1987	2
Niger	6 June 1987	1
Sudan	17 June 1987	1
Argentina	7 November 1987	1

Second period reports

State party	Date due	Number of reminders sent
Libyan Arab Jamahiriya	4 February 1983	9
Iran (Islamic Republic of)	21 March 1983	9
Uruguay	21 March 1983	8
Madagascar	3 August 1983	8
Mauritius	4 November 1983	8
Bulgaria	28 April 1984	8
Cyprus	18 August 1984	8
Syrian Arab Republic	18 August 1984	8
United Kingdom of Great Britain and Northern Ireland - dependent territories	18 August 1984	4
New Zealand	27 March 1985	6
Gambia	21 June 1985	6
India	9 July 1985	6
Costa Rica	2 August 1985	5
Suriname	2 August 1985	5
Italy	1 November 1985	5
Venezuela	1 November 1985	5
Lebanon	21 March 1986	4
Dominican Republic	11 April 1986	4
Kenya	11 April 1986	4
Mali	11 April 1986	4
United Republic of Tanzania	11 April 1986	4
Nicaragua	11 June 1986	3
Jamaica	1 August 1986	2
Sri Lanka	10 September 1986	2
Morocco	31 October 1986	2
Netherlands	31 October 1986	2
Panama	31 December 1986	2
Jordan	22 January 1987	2
Guyana	10 April 1987	2
Mexico	22 June 1987	1
Central African Republic a/	7 August 1987	-
Iceland	30 October 1987	1

*Information taken from the bulletin of the Human Rights Committee of the International Covenant on Civil and Political Rights, CCPR/C/53, 20 January 1988.

Countries listed in order of signature to the Helsinki Final Act

X = Ratified or acceded to

COUNTRY	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS	INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	DECLARATION REGARDING ARTICLE 41 OF THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS
Federal Republic of Germany	X	X	X	
German Democratic Republic	X	X		
United States of America				
Republic of Austria	X	X	X	
Kingdom of Belgium	X	X		
People's Republic of Bulgaria	X	X		
Canada	X	X	X	X
Republic of Cyprus	X	X		
Denmark	X	X	X	X
Spain	X	X	X	X
Republic of Finland	X	X	X	X
French Republic	X	X		X
United Kingdom of Great Britain & Northern Ireland	X	X	X	
Hellenic Republic of Greece	X			

X = Ratified or acceded to

COUNTRY	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS	INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	DECLARATION REGARDING ARTICLE 41 OF THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS
Hungarian People's Republic	X	X		
Ireland				
Iceland	X	X	X	X
Italian Republic	X	X	X	X
Principality of Liechtenstein				
Grand Duchy of Luxembourg	X	X	X	X
Republic of Malta				
Principality of Monaco				
Norway	X	X	X	X
Kingdom of the Netherlands	X	X	X	X
Polish People's Republic	X	X		
Portugal	X	X		X
Socialist Republic of Romania	X	X		

X = Ratified or acceded to

COUNTRY	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS	INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	DECLARATION REGARDING ARTICLE 41 OF THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS
San Marino	X	X		X
Holy See				
Sweden	X	X	X	X
Swiss Confederation				
Czechoslovak Socialist Republic	X	X		
Republic of Turkey				
Union of Soviet Socialist Republics	X	X		
Socialist Federal Republic of Jugoslavia	X	X		

Information taken from:
"International Instruments Relating to Human Rights," by Jean-Bernard Marie, Human Rights Law Journal, Vol. 8, No. 1, 1987.

APPENDIX K

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 23, 1978.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, subject to certain reservations, understandings and declarations. I transmit herewith four treaties pertaining to human rights. Three of these treaties were negotiated at the United Nations:

—The International Convention on the Elimination of All Forms of Racial Discrimination, signed on behalf of the United States on September 28, 1966.

—The International Covenant on Economic, Social and Cultural Rights, signed on behalf of the United States on October 5, 1977.

—The International Covenant on Civil and Political Rights, signed on behalf of the United States on October 5, 1977.

The fourth treaty was adopted by the Organization of American States in 1969, and is open for adoption only by members of that Organization: The American Convention on Human Rights, signed on behalf of the United States on June 1, 1977.

I also transmit, for the information of the Senate, the report of the Department of State on the United Nations treaties and the Department's separate report on the American Convention.

While the United States is a leader in the realization and protection of human rights, it is one of the few large nations that has not become a party to the three United Nations human rights treaties. Our failure to become a party increasingly reflects upon our attainments, and prejudices United States participation in the development of the international law of human rights. The two human rights Covenants are based upon the Universal Declaration of Human Rights, in whose conception, formulation and adoption the United States played a central role. The Racial Discrimination Convention deals with a problem which in the past has been identified with the United States; ratification of this treaty will attest to our enormous progress in this field in recent decades and our commitment to ending racial discrimination.

The United States participated actively and effectively in the negotiation of the American Convention of Human Rights. That Convention, like the United Nations Covenant on Civil and Political Rights, treats in detail a wide range of civil and political rights. Freedom of speech and thought, participation in government, and others are included which Americans have always considered vital to a free, open and humane society. United States ratification of the Convention will give us a unique opportunity to express our support for the cause of human rights in the Americas.

The great majority of the substantive provisions of these four treaties are entirely consistent with the letter and spirit of the United States Constitution and laws. Wherever a provision is in conflict with

United States law, a reservation, understanding or declaration has been recommended. The Department of Justice concurs in the judgment of the Department of State that, with the inclusion of these reservations, understandings and declarations, there are no constitutional or other legal obstacles to United States ratification. The reports of the Department of State on these four treaties describe their provisions and set forth the recommended reservations, understandings and declarations.

Should the Senate give its advice and consent to ratification of the Convention on the Elimination of All Forms of Racial Discrimination, I would then have the right to decide whether to make a declaration, pursuant to Article 14 of the Convention, recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals. Such a declaration would be submitted to the Senate for its advice and consent to ratification.

Should the Senate give its advice and consent to ratification of the International Covenant on Civil and Political Rights, I intend upon deposit of United States ratification to make a declaration, pursuant to Article 14 of the Covenant. By that declaration the United States would recognize the competence of the Human Rights Committee established by Article 28 to receive and consider "communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

Should the Senate give its advice and consent to ratification of the American Convention on Human Rights, I intend upon deposit of United States ratification to make a declaration pursuant to Article 45 of the Convention. By that declaration the United States would recognize the competence of the Inter-American Commission on Human Rights established by Article 33 to receive and examine "communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."

By giving its advice and consent to ratification of these treaties, the Senate will confirm our country's traditional commitment to the promotion and protection of human rights at home and abroad. I recommend that the Senate give prompt consideration to the treaties and advise and consent to their ratification.

JIMMY CARTER.

APPENDIX L

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 17, 1977.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to their transmission to the Senate for advice and consent to ratification subject to specified reservations, understandings and declarations, three related treaties:

—The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on December 21, 1965.

—The International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on December 16, 1966.

—The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on December 16, 1966.

These treaties are designed to implement the human rights provisions of the Charter of the United Nations which, in Articles 1, 55 and 56, provides that the Organization and its members shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

The Convention on the Elimination of all Forms of Racial Discrimination and the two Human Rights Covenants together constitute a paramount contribution to the development of the international law of human rights. The Convention on Racial Discrimination and the Covenant on Civil and Political Rights are in the legal and ethical tradition of the West. They give expression to human rights that are, for the most part, accepted in United States law and practice. The Covenant on Economic, Social and Cultural Rights while also reflective of United States law and policy, is primarily a statement of goals to be achieved progressively, rather than through immediate implementation.

The three treaties have been widely approved by the world community. The Convention on Racial Discrimination, which entered into force January 4, 1969, now numbers 98 countries among its parties; the Covenant on Economic, Social and Cultural Rights, which entered into force January 3, 1976, has 46 ratifications or accessions, and the Covenant on Civil and Political Rights, which entered into force March 23, 1976, has 43 ratifications or accessions. It is increasingly anomalous that the list of parties does not include the United States, whose human rights record domestically and internationally has long

served as an example to the world community. The Covenants were signed for the United States on October 5, 1977; the Convention on Racial Discrimination was signed on September 28, 1966.

In view of the large number of States concerned and the disparity of view on some questions, it was not possible to negotiate treaties which were in perfect accord with the United States Constitution and law. The treaties contain a small number of provisions which are or appear to be in conflict with United States law. The most serious examples are paragraphs (a) and (b) of Article 4 of the Convention on Racial Discrimination, and Article 20 of the Covenant on Civil and Political Rights, which conflict with the right of free speech as protected by the Constitution. Reservations to these and other provisions, discussed below, along with a number of statements of understanding, are designed to harmonize the treaties with existing provisions of domestic law. In addition, declarations that the treaties are not self-executing are recommended. With such declarations, the substantive provisions of the treaties would not of themselves become effective as domestic law. The Department of Justice is of the view that, with these reservations, declarations and understandings, there are no constitutional or other legal objections to United States ratification of the treaties.

The following is a summary of the provisions of the terms of the treaties, and the reservations, declarations and understandings to them recommended to the Senate by the Departments of State and Justice.

Convention on the Elimination of All Forms of Racial Discrimination

The Convention is designed to forbid racial and ethnic discrimination in all fields of public life. For the most part, its terms closely parallel United States constitutional and statutory law and policy. The Convention is divided into three parts: Part I (Articles 1 through 7) contains the substantive provisions; Part II (Articles 8 through 16) contains administrative and enforcement clauses; Part III (Articles 17 through 25) sets forth the final clauses.

Article 1 defines "racial discrimination" broadly, but specifies that the Convention does not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens. Paragraph (4) of Article 1 and paragraph (2) of Article 2 also permit, but do not require, what have come to be known in the United States as "affirmative action" programs.

Article 2 specifies steps to be taken to eliminate racial discrimination, including nullification of discriminatory laws at all levels of political organization and prohibition of racial discrimination by "any persons, group or organization." Article 3 condemns and prohibits racial segregation and apartheid. These provisions, along with those of Article 5, require equality in several areas of economic, social and cultural rights, and the right of access to public places. They require a statement preserving United States distinctions between various governmental and private activities. The following understanding is recommended:

"The United States understands its obligation to enact legislation and take other measures under paragraph (1) of Article 2, subparagraphs (1)(c) and (1)(d) of Article 2, Article 3, and Article 5 to extend only to governmental or government-assisted activities and to private activities required to be available on a non-discriminatory basis as defined by the Constitution and laws of the United States."

Article 4 condemns propaganda and organizations based on racial hatred or superiority. Paragraph (c) of Article 4 requires that States Parties forbid public authorities or institutions, national or local, from promoting or inciting racial discrimination. This obligation is consonant with United States law and policy. Paragraphs (a) and (b), however, provide for restrictions on the dissemination of ideas, or participation in organizations based on those ideas, and as such would clearly violate the freedom of expression and association guaranteed by the Constitution and United States law and practice. With respect to paragraphs (a) and (b) of Article 4, the following reservation is recommended:

"The Constitution of the United States and Article 5 of this Convention contain provisions for the protection of individual rights, including the right to free speech, and nothing in this Convention shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

Article 5 enumerates certain fundamental rights the enjoyment and exercise of which must be protected against abridgement by racial discrimination. These rights include the basic civil and political rights guaranteed in the United States, such as rights to personal security, universal suffrage, freedom of movement, and freedom of thought and expression. The rights also include economic, social and cultural rights, including the right to form and join trade unions, the right to housing, the right to employment, and the right of access to any place or service intended for use by the general public. The obligation assumed under Article 5 is not designated primarily to protect or guarantee the several enumerated rights as such, but rather to assure equality and non-discrimination in the enjoyment of those rights.

Article 6 requires the provision of effective protection and remedies, through the competent tribunals and other government institutions, against acts of racial discrimination which violate the Convention. Article 7 commits States Parties to undertake active programs to combat racial discrimination and prejudice.

Articles 8 through 16 constitute the administrative and enforcement provisions of the Convention. A Committee on the Elimination of Racial Discrimination is established, along with a requirement that States Parties submit reports to the United Nations Secretary-General, for consideration by the Committee, describing the measures they have adopted which give effect to the provisions of the Convention. The Committee may make recommendations based on the reports and information received from States Parties.

A procedure is also established permitting States Parties to submit complaints to the Committee alleging that other States Parties are not giving effect to the provisions of the Convention. A conciliation procedure constitutes the central mechanism for settling such disputes. No legally binding recommendations or awards are permitted.

Article 14 permits, but does not require, a State Party to declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within the jurisdiction of that State Party, claiming to be victims of a violation by that State Party of any of the rights set forth in the Con-

vention. Individual complaints may be considered by the Committee only after all available domestic remedies have been exhausted.

Article 15 provides for the consideration by the Committee of reports on implementation of the Convention by States Parties in non-self-governing territories over which they exercise jurisdiction.

Article 16 confirms that the procedures for resolution of disputes and complaints provided in the Convention are additional to rather than substitutes for other procedures agreed to by the States Parties.

Articles 17 through 25 are the final clauses. Article 22 provides that any dispute with respect to the interpretation or application of the Convention which is not settled by negotiation or by the procedures provided for in the Convention shall at the request of any party to the dispute be referred to the International Court of Justice unless the disputants agree to another mode of settlement.

In addition to the general understanding and reservation recommended above, the following reservation is recommended:

"The United States shall implement all the provisions of the Convention over whose subject matter the Federal Government exercises legislative and judicial administration; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant."

This reservation is designed to deal with a number of provisions, notably subparagraphs (1)(a) and (1)(c) of Article 2, paragraph (c) of Article 4, Article 6 and Article 7, which impose obligations whose fulfillment is dependent upon the legal power of state and local governments as well as that of the Federal Government.

It is further recommended that a declaration indicate the non-self-executing nature of Articles 1 through 7 of the Convention. Absent such a statement, the terms of the Convention might be considered as directly enforceable law on a par with Congressional statutes. While the terms of the Convention, with the suggested reservations and understanding, are consonant with United States law, it is nevertheless preferable to leave any further implementation that may be desired to the domestic legislative and judicial process. The following declaration is recommended:

"The United States declares that the provisions of Articles 1 through 7 of this Convention are not self-executing."

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights sets forth a number of rights which, while for the most part in accord with United States law and practice, are nevertheless formulated as statements of goals to be achieved progressively rather than implemented immediately.

Parts I, II, and III of the Covenant (Articles 1 through 15) contain the substantive provisions; Part IV (Articles 16 through 23) sets forth the administrative provisions; and Part V (Articles 26 through 31) contains the final clauses.

Article 1 affirms in general terms the right of all peoples to self-determination, and the right to freely dispose of their natural wealth and resources without prejudice to any obligations arising out of inter-

national economic cooperation, based upon the principle of mutual benefit, and international law. This is consonant with United States policy.

Paragraph (1) of Article 2 sets forth the basic obligation of States Parties "to take steps," individually and through international assistance and cooperation, "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" by the Covenant "by all appropriate means, including legislative measures." In view of the terms of paragraph (1) of Article 2, and the nature of the rights set forth in Articles 1 through 15 of the Covenant, the following statement is recommended:

"The United States understands paragraph (1) of Article 2 as establishing that the provisions of Articles 1 through 15 of this Covenant describe goals to be achieved progressively rather than through immediate implementation."

It is also understood that paragraph (1) of Article 2, as well as Article 11, which calls for States Parties to take steps individually and through international cooperation to guard against hunger, import no legally binding obligation to provide aid to foreign countries.

Paragraph (2) of Article 2 forbids discrimination of any sort based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. United States and international law permit certain limited discrimination against non-nationals in appropriate cases (*e.g.*, ownership of land or of means of communication). It is understood that this paragraph also permits reasonable distinctions based on citizenship. Paragraph (3) of Article 2 provides that developing countries, with due regard to human rights and their national economy, may determine to what extent they will guarantee the economic rights recognized in the Covenant to non-nationals. Of related significance is Article 25, which provides that nothing in the Covenant is to be interpreted as impairing the "inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources." With respect to paragraph (3) of Article 2 and to Article 25, the following declaration is recommended:

"The United States declares that nothing in the Covenant derogates from the equal obligation of all States to fulfill their responsibilities under international law. The United States understands that under the Covenant everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property."

This declaration and understanding will make clear the United States position regarding property rights, and expresses the view of the United States that discrimination by developing countries against nonnationals or actions affecting their property or contractual rights may only be carried out in accordance with the governing rules of international law. Under international law, any taking of private property must be nondiscriminatory and for a public purpose, and must be accompanied by prompt, adequate, and effective compensation.

Article 3 provides that the Parties undertake to ensure the equal rights of men and women with respect to the rights set forth in the Covenant. Article 4 permits derogation from the rights enumerated in

the Covenant only by law for the general welfare and only insofar as such limitations may be compatible with the nature of the rights.

Paragraph (1) of Article 5 provides that nothing in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized in the Covenant, or at their limitation to a greater extent than provided for in the Covenant. This clause raises in indirect fashion the problem of freedom of speech, and accordingly, the following statement is recommended:

"The Constitution of the United States and Article 19 of the International Covenant on Civil and Political Rights contain provisions for the protection of individual rights, including the right to free speech, and nothing in this Covenant shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

Paragraph (2) of Article 5 provides that existing rights may not be restricted because they are not recognized in the Covenant or recognized to a lesser extent.

Articles 6 through 9 of the Covenant list certain economic rights, including the right to work (Article 6), to favorable working conditions (Article 7), to organize unions (Article 8), and to social security (Article 9). Some of the standards established under these articles may not readily be translated into legally enforceable rights, while others are in accord with United States policy, but have not yet been fully achieved. It is accordingly important to make clear that these provisions are understood to be goals whose realization will be sought rather than obligations requiring immediate implementation.

Similarly, Articles 10 through 14 detail certain social rights, among them the right to protection of the family, including standards for maternity leave (Article 10), the right of freedom from hunger (Article 11), the right to physical and mental health (Article 12), and the right to education (Articles 13 and 14). Article 15 provides for certain cultural rights, all of which are appropriately protected by United States law and policy.

Articles 16 through 23 contain administrative provisions requiring the submission of reports on implementation of the Covenant to the United Nations Secretary-General for transmission to and consideration by the Economic and Social Council. The Council may transmit information and make recommendations.

Articles 26 through 31 are the final clauses. Article 28 states that "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." In view of the nature of the United States federal system, this Article is not acceptable as formulated. With respect to Article 28, the following reservation is recommended:

"The United States shall progressively implement all the provisions of the Covenant over whose subject matter the Federal Government exercises legislative and judicial jurisdiction; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the

end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant."

In addition, it is further recommended that a declaration indicate the non-self-executing nature of Articles 1 through 15 of the Covenant. For the same reasons as set forth above with regard to the Convention on the Elimination of All Forms of Racial Discrimination, the following declaration is recommended:

"The United States declares that the provisions of Articles 1 through 15 of this Covenant are not self-executing."

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is, of the three treaties submitted, the most similar in conception to the United States Constitution and Bill of Rights. The rights guaranteed are those civil and political rights with which the United States and the western liberal democratic tradition have always been associated. The rights are primarily limitations upon the power of the State to impose its will upon the people under its jurisdiction.

Parts I, II, and III of the Covenant (Articles 1 through 27) contain the substantive provisions; Part IV (Articles 28 through 45) contains the administrative and enforcement provisions; Part V includes under Articles 46 and 47 further substantive clauses; and Part VI (Articles 48 through 53) sets forth the final clauses.

Article 1, which contains provisions regarding self-determination and the right to dispose of natural wealth and resources, subject to the principles of mutual benefit and international law, is identical to Article 1 of the Covenant on Economic, Social and Cultural Rights.

Article 2 commits States Parties to provide the rights enumerated in the Covenant without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States Parties are required to provide effective legal remedies for violations of the rights protected by the Covenant.

Article 3 expressly obligates States Parties to undertake to ensure the equal right of men and women to the enjoyment of the civil and political rights set forth in the Covenant.

Article 4 permits derogation from certain of the rights guaranteed by the Covenant in situations of public emergency "which threatens the life of the nation" and the existence of which is officially proclaimed, provided that those rights are not abridged on a discriminatory basis.

Paragraph (1) of Article 5 of the Covenant is identical to paragraph (1) of Article 5 of the Covenant on Economic, Social and Cultural Rights, and thus indirectly raises the question of free speech. Article 20 expressly prohibits "any propaganda for war" and "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." This provision conflicts with the Constitution, and thus a reservation is required. Article 20 also appears to restrict the freedom of expression provided for in Article 19 of the Covenant. With respect to Article 20 and to paragraph (1) of Article 5, the following reservation is recommended:

"The Constitution of the United States and Article 19 of this Covenant contain provisions for the protection of individual rights, including the right of free speech, and nothing in this Covenant shall be

deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

Article 6 of the Covenant provides a general right to protection of life, and limits the circumstances in which capital punishment may be imposed or carried out. Paragraph 2 indicates that the death sentence may be imposed only for "the most serious crimes in accordance with law in force at the time of the commission of the crime," and only pursuant to a final judgment of a competent court. Paragraph 4 provides a right to seek pardon or commutation of the death sentence. Paragraph 5 forbids execution of persons under the age of 18 or of pregnant women. As United States law is not entirely in accord with these standards, the following reservation is recommended:

"The United States reserves the right to impose capital punishment on any person duly convicted under existing or future laws permitting the imposition of capital punishment."

Article 7 forbids torture and inhuman or degrading treatment or punishment. Article 8 forbids slavery.

Article 9 protects the right to liberty and security of the person, and sets forth the conditions under which persons may be arrested and tried for criminal charges. Paragraph 5 grants a right to compensation for unlawful arrest or detention which goes beyond current federal law. A related provision is paragraph (1) of Article 15, which forbids ex post facto criminal offenses. The third clause of that paragraph provides that if, subsequent to the commission of an offense, provision is made by law for the imposition of a lighter penalty, the offender is to benefit thereby. This right is often granted in practice in the United States, but is not required by law. With respect to paragraph (5) of Article 9 and to paragraph (1) of Article 15, the following reservation accordingly is recommended:

"The United States does not adhere to paragraph (5) of Article 9 or to the third clause of paragraph (1) of Article 15."

Article 10 establishes standards for the treatment of prisoners. Subparagraph (2)(a) of Article 10 requires that accused persons be segregated from convicted persons save in exceptional circumstances, while subparagraph (2)(b) requires that accused juvenile persons be separated from adults and brought as speedily as possible for adjudication. Paragraph (3) of Article 10 provides that the penitentiary system is to "comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." Practice and policy in United States prisons does not fully accord with these standards, and accordingly, with respect to paragraphs (2) and (3) of Article 10, the following statement is recommended:

"The United States considers the rights enumerated in paragraphs (2) and (3) of Article 10 as goals to be achieved progressively rather than through immediate implementation."

Article 11 prohibits imprisonment solely on the basis of inability to fulfill a contractual obligation.

Article 12 guarantees the rights of freedom of movement and residence, and of emigration, to all those lawfully within the territory of a State Party. Article 13 permits aliens lawfully within the territory of a State Party to be expelled only in pursuance of a decision reached in accordance with law.

Article 14 establishes standards for the conduct of trials, including the right to be presumed innocent. Paragraph (3) protects a defendant's right to counsel, including court-appointed counsel, to a speedy trial, to be informed of the charges against him, to subpoena and examine witnesses, and not to testify against himself. Paragraph (4) requires that juvenile courts "take account" of the age and possible rehabilitation of juvenile defendants. Paragraph (5) protects the right to appeal convictions. Paragraph (6) gives a right to compensation for miscarriage of justice under certain circumstances; this right is protected by the United States Code, Title 28, § 1495 and 2513. Paragraph (7) forbids re-trial for the same offence, following final conviction or acquittal for that offence.

It is possible to read all the requirements contained in Article 14 as consistent with United States law, policy and practice. However, the Senate may wish to record its understanding of certain provisions of that Article as follows:

"The United States understands that subparagraphs (3) (b) and (d) of Article 14 do not require the provision of court-appointed counsel when the defendant is financially able to retain counsel or for petty offenses for which imprisonment will not be imposed. The United States further understands that paragraph (3)(e) does not forbid requiring an indigent defendant to make a showing that the witness is necessary for his attendance to be compelled by the court. The United States considers that provisions of United States law currently in force constitute compliance with paragraph (6). The United States understands that the prohibition on double jeopardy contained in paragraph (7) is applicable only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the Federal Government or a constituent unit, which is seeking a new trial for the same cause."

Article 16 guarantees the right to recognition as a person before the law. Article 17 protects against interference with individual privacy.

Article 18 sets forth the right of freedom of thought, conscience and religion.

Other key rights provided for in the Covenant are those of peaceful assembly (Article 21), freedom of association (Article 22), protection of the family, including the obligation of States Parties to take appropriate steps to ensure equality of rights and responsibilities between spouses (Article 23), protection of children without regard to their status at birth (Article 24), and participation in public's affairs, including voting and accession to public service (Article 25). Paragraph (b) of Article 25 provides that every citizen shall have the right and opportunity: "To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."

Article 26 provides that all persons are equal before the law and entitled to its equal protection, and generally prohibits discrimination.

Article 27 provides that in States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities are not to be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Part IV of the Covenant contains the administrative and enforcement provisions. A Human Rights Committee is established, and rules for its constitution and functioning are provided. The States Parties to the Covenant are required to submit reports to the United Nations Secretary-General for transmission to and consideration by the Committee, which may make findings and recommendations on the basis of the reports.

Article 41 permits, but does not require, a State Party to declare that it recognizes the competence of the Committee to receive and consider communications "to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant." If the Committee is unable to resolve a matter submitted to it pursuant to Article 41, a Conciliation Commission may be appointed, with the prior consent of the parties concerned. The good offices of the Commission are to be made available to the parties, and recommendations may be made by the Commission if a solution to the dispute is not reached.

Should the Senate give its advice and consent to ratification of the Covenant, it is contemplated that the United States will make a declaration pursuant to Article 41. It is in the interest of the United States to participate in and influence the State-to-State complaint procedure established by the Covenant, not least because it is to be hoped that the work of the Committee will contribute to the development of a generally accepted international law of human rights. It should be noted that declarations made pursuant to Article 41 may be withdrawn at any time by notification to the Secretary-General.

Part V of the Covenant contains two substantive provisions, Articles 46 and 47. Article 46 states that the Covenant is not to be interpreted as impairing the provisions of the United Nations Charter and of the constitutions of the specialized agencies which define the respective responsibilities of the various United Nations organs and of the agencies with respect to the matters dealt with in the Covenant.

Article 47 is identical to Article 25 of the Covenant on Economic, Social and Cultural Rights. It provides that nothing in the Covenant is to be interpreted as impairing the "inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources." With respect to Article 47, the following declaration is recommended:

"The United States declares that the right referred to in Article 47 may be exercised only in accordance with international law."

Part VI of the Covenant (Articles 48 through 53) contains the final clauses. Article 50, which is identical to Article 28 of the Covenant on Economic, Social and Cultural Rights, explicitly requires that the Covenant be applied to all parts of federal States without limitation or exception. For the reasons set forth above regarding Article 28 of the Covenant on Economic, Social and Cultural Rights, the following reservation is recommended with respect to Article 50:

"The United States shall implement all the provisions of the Covenant over whose subject matter the Federal Government exercises legislative and judicial jurisdiction; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant."

In addition, it is further recommended that a declaration indicate the non-self-executing nature of Articles 1 through 27 of the Covenant. For the same reasons as set forth above with regard to the Convention on Racial Discrimination and the Covenant on Economic, Social and Cultural Rights, the following declaration is recommended:

"The United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing."

A related instrument of significance which is not being submitted to the Senate at this time is the Optional Protocol to the International Covenant on Civil and Political Rights. The Optional Protocol, like Article 14 of the Convention on Racial Discrimination, establishes a procedure under which individuals who consider their rights under the Covenant to have been violated may, after exhausting all available domestic remedies, appeal in their individual capacity to the Human Rights Committee established by Article 28 of the Covenant. Any State that becomes a party to the Optional Protocol recognizes, by becoming a party, the competence of the Committee to receive and consider communications from individuals subject to the jurisdiction of that State who claim to be victims of a violation by that State of any of the rights set forth in the Covenant.

The Department of State believes that the three human rights treaties submitted with this report are now and will continue to be of cardinal importance in the progressive development of the international law of human rights. United States adherence to these treaties is in the national interest and in the interest of the world community. It is our hope that the United States, after the fullest consideration by the Senate, will become party to all three treaties.

Respectfully submitted.

WARREN CHRISTOPHER.

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